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HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. [redacted]108

PHILIP LANDES,

Appellant,

—vs.—

THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK, Family Court Division, County of Bronx, HON. LOUIS LORENCE, individually and as a Justice thereof,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

JURISDICTIONAL STATEMENT.

PHILIP LANDES,
Appellant *pro se*,
Room 1212,
521 Fifth Ave.,
New York, N. Y.

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PHILIP LANDES,

Appellant,

—vs.—

THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK, Family Court Division, County of Bronx, HON. LOUIS LORENCE, individually and as a Justice thereof,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

JURISDICTIONAL STATEMENT.

Appellant, Philip Landes, appeals from the judgment of the Court of Appeals of the State of New York, made and entered on January 13, 1955, dismissing his appeal as of right from an order of the New York State Supreme Court, Special Term, Bronx County, which denied to the appellant an order of restraint against the Domestic Relations Court of the City of New York, *et al.* He submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal, and that several novel and substantial questions of public importance, not heretofore decided by this Court, are presented.

OPINIONS BELOW.

The final judgment of the New York State Court of Appeals is reported at 308 N. Y. 756. A copy of the final judgment, together with the decision as it was officially reported in the advance reports, is annexed hereto as Appendix A.

The decision of the New York State Supreme Court, Special Term, Bronx County (Rabin, *J.*), does not appear to have been reported. A copy of the decision as it was published in the New York Law Journal of November 15, 1954, and of the order entered on November 26, 1954 are also annexed hereto as Appendix B.

Annexed as Appendix C are earlier opinions in other proceedings commenced in the same case including Mr. Justice Reed's denial of a stay in these former proceedings on the ground of "No Final Judgment."

JURISDICTION.

The appellant brought this action to restrain the Domestic Relations Court of the City of New York from exercising jurisdiction, under reciprocal laws of New York and California, in violation of the United States and New York State Constitutions. (R., 25.) The proceeding was instituted in the New York State Supreme Court, Special Term, Bronx County, on October 19, 1954, under Article 78 of the New York State Civil Practice Act. Article 78 provides for a proceeding against a body or an officer and comprises Sections 1283 to 1306 inclusive of the Civil Practice Act.

The final order of the New York State Supreme Court, Bronx County, dismissing the petition for an order of restraint, was entered on November 26, 1954, and an appeal as of right was taken directly to the Court of Appeals of the State of New York, by virtue of Section 588(4) of the Civil

Practice Act.[1] The Court of Appeals dismissed this appeal in a judgment made and entered on January 13, 1955.

A notice of appeal was filed with the Court of Appeals of the State of New York on April 6, 1955.[2]

The jurisdiction of the United States Supreme Court to review this case on appeal is invoked under Title 28, United States Code, Section 1257(2), since the validity of the New York "Uniform Support of Dependents Law" and the California "Uniform Reciprocal Enforcement of Support Act" have been challenged unsuccessfully in the Courts of New York State on the ground of their being repugnant to the United States Constitution.

The following cases sustain the jurisdiction of the United States Supreme Court to review this appeal:

(a) On the question of final judgment. *Clark* v. *Williard*, 292 U. S. 112, 117-119; *Largent* v. *Texas*, 318 U. S. 418, 421-422; *Department of Banking* v. *Pink*, 317 U. S. 264, 268; *Rogers* v. *Alabama*, 192 U. S. 226, 230-1.

(b) On the question of an appeal from a State proceeding dealing with an order of restraint or similar proceeding. *Madruga* v. *Superior Court*, 346 U. S. 556, 557; *Bandini* v. *Superior Court*, 284 U. S. 8, 14.

(c) On the question of New York State procedure. *Young* v. *Ragen*, 337 U. S. 235, 238; *Titus* v. *Wallick*; 306 U. S. 282, 284. Also New York State cases: *Gardner* v. *Domestic Relations Court, et al.*, 54 N. Y. S. 2d 672; *Teeval Co.* v. *Stern*, 301 N. Y. 346; *Lapchak* v. *Baker*, 298 N. Y. 89.

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[1] The text of Section 588(4) of the New York State Civil Practice Act is contained in this statement under the caption "How the State courts passed upon the federal questions."

[2] A notice of appeal was also filed in the New York State Supreme Court on April 7, 1955.

STATUTES INVOLVED.

The primary statute involved on this appeal is the New York State "Uniform Support of Dependents Law," Chapter 807 of the Laws of 1949 of the State of New York. Also involved is the California "Uniform Reciprocal Enforcement of Support Act," Title 10a, comprising Sections 1650 to 1690, inclusive, of Part 3 of the Code of Civil Procedure. The complete texts of both of these statutes are set forth in Appendix D and E hereto.

BRIEF HISTORY OF STATUTES INVOLVED AS AN INTRODUCTION TO QUESTIONS PRESENTED.

The New York State "Uniform Support of Dependents Law" was originally enacted in 1948 and amended in 1949. The primary purpose and intent of this law as indicated on page 22 of the 1949 annual report of the Judicial Council of the State of New York is to provide for a civil remedy for the support of wives and children by husbands who abandon them and move to another State. (R., 27, 28.) Also see *Mahan* v. *Reed*, 83 S. E. 2d 706, 710-711.

The "Uniform Support of Dependents Law," however, contains vague and indefinite catch-all clauses so that the law is presently applied to contrary facts and in the instant case it has been used as an adjunct to a divorce proceeding in a foreign State and in favor of an absconding wife. (R., 25.)

The New York "Uniform Support of Dependents Law," the first of the uniform interstate support laws, has now been adopted by five of the several other States (Delaware, Florida, Georgia, Illinois, and Iowa) and by the territorial government of the Virgin Islands.[3]

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[3] Uniform Laws Annotated, Volume 9A, 1954 Cumulative Annual Pocket Part, Publisher, Edward Thompson Co., page 58.

The "Uniform Reciprocal Enforcement of Support Act" which is also brought into question on this appeal and which has been adopted by the State of California was approved by the National Conference of Commissioners on Uniform State Laws in 1950 and amended in 1952. Approximately thirty-five to forty of the State and territorial governments have adopted either the 1950 or 1952 versions of this act, with or without variations.[4]

QUESTIONS PRESENTED.

1. Have the States of New York and California entered into a compact with each other without the consent of Congress by means of the New York "Uniform Support of Dependents Law" (*per se*, a civil law on its face) and the California "Uniform Reciprocal Enforcement of Support Act" (*per se*, a civil and criminal law on its face) contrary to and repugnant to the purpose and intent of Article 1, Section 10, Subsection 3, of the United States Constitution?

2. Are the procedural requirements outlined in the New York "Uniform Support of Dependents Law" and the California "Uniform Reciprocal Enforcement of Support Act" violative of and repugnant to both Article III, Section 2, Subsection 1, of the United States Constitution and the due process clause of the Fourteenth Amendment, in that a controversy between citizens of different States is adjudicated partially in a State court of New York and partially in a State court of California with neither one of the State courts having complete jurisdiction over the parties or the subject matter in controversy?

3. May a citizen of the State of New York invoke the protection of the Sixth Amendment as well as the due process

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[4]Uniform Laws Annotated, *supra*, pages 58, 64, 92.

clause of the Fourteenth Amendment when he is being tried in New York State on charges arising out of the criminal laws of a foreign State (California)? And are the California "Uniform Reciprocal Enforcement of Support Act" and the New York "Uniform Support of Dependents Law" on their face contrary to and repugnant to both the Sixth and Fourteenth Amendments to the United States Constitution?

4. Is the New York "Uniform Support of Dependents Law" denying to the appellant-father herein the equal protection of the laws contrary to and repugnant to the Fourteenth Amendment to the United States Constitution in that:

(a) Should a father leave the State of New York and unlawfully take his child with him, the State of New York will make every effort to recover that child from without the State. In the instant case, where a New York State domiciliary father has been unlawfully deprived of his child, may the State of New York refrain from making any efforts towards recovery of said child, but in lieu thereof, impose penalties and forfeitures on the father based on the "Uniform Support of Dependents Law"?

(b) Appellant contends that in the absence of any wrongdoing, a father has certain rights in his child, coextensive with that of the mother, as to the services, society, aid, comfort and companionship of his child. Hence, is the appellant-father herein being denied the equal protection of the law with respect to these rights inasmuch as the provisions of the New York "Uniform Support of Dependents Law" have in effect condoned the unlawful taking of the child by its mother (now divorced and remarried) away from the appellant-father and out of the jurisdiction of the State of New York?

STATEMENT OF THE CASE.

(A) Chronology of Events

The pertinent facts of this case are set forth in the record of the Court below, and they have not been controverted by the appellees in this action. Briefly, they are as follows:

1. In February, 1951, the appellant's then wife abandoned him and took their infant daughter, then six and a half years of age, out of New York State to the State of California without appellant-father's knowledge or consent. (R., 26.) The appellant-father has neither seen his child nor received any word as to her health or welfare since that date. (R., 27, 48.)

2. On March 26, 1952, after establishing a year's required residence in the State of California, the appellant's wife instituted divorce proceedings, together with a collateral action for support, in the Superior Court of California, County of Los Angeles. The action for support was instituted under the California "Uniform Reciprocal Enforcement of Support Act" (*per se*, a criminal and civil law on its face). (R., 26-27.)

3. The California divorce action was not contested and the State of California never obtained jurisdiction over the person of the appellant since he neither appeared nor submitted to the jurisdiction of the State of California. (R., 27.)

4. The petition under the California "Uniform Reciprocal Enforcement of Support Act" was transmitted to New York. On May 28, 1952, Mr. Justice Diserio of the Domestic Relations Court, Bronx County, New York, held a hearing and issued an order against appellant. An appeal from this order was taken to the Appellate Division of the New York State Supreme Court. (R., 27.)

5. On July 3, 1952, an interlocutory divorce decree was granted to appellant's wife by the Superior Court of the

State of California. Custody of the child was awarded to the divorced wife, with no rights of custody or visitation whatsoever to the appellant-father. The final divorce decree was entered on July 29, 1953.[5]

6. The former wife of appellant has remarried in the community property State of California to an individual with substantial income and neither the wife or child are in need of support. (R., 22, 48.)[6]

(B) Prior appellate proceedings in this case

1. On March 2, 1954, the Appellate Division of the New York State Supreme Court reversed the order of the Domestic Relations Court and remitted the matter back for proceedings *de novo*. The Appellate Division did not then specifically rule on the United States and New York State constitutional questions which were properly before the Appellate Division. The constitutional questions were the principal issues on appeal and existed independently of the merits of the case.

2. Prior to the Appellate Division decision the appellant had made payments totalling $1,300.00 under the May, 1952 order of the Domestic Relations Court. (R., 27.)

3. The appellees in this action have construed the silence of the Appellate Division on the constitutional questions

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[5] The record below makes reference to the divorce. (R., 26.) The exact dates and contents of the divorce decrees are known to the appellees inasmuch as they have obtained copies of the divorce decrees from California. The appellant has likewise obtained copies of the divorce decrees. Details as to the divorce decrees are contained in prior proceedings had herein which were incorporated by reference into the present proceeding.

[6] Under the provisions of Sections 196 and 208 of the California Civil Code the divorced and remarried wife is primarily liable for the support of the child. This is more fully discussed under the caption: "Denial of equal protection of the laws," *infra*.

raised as upholding the constitutionality of the New York "Uniform Support of Dependents Law." (R., 24.)

4. An appeal from the Appellate Division decision was taken to the Court of Appeals of the State of New York. On April 19, 1954, a motion was made before the Court of Appeals for an order certifying that one or more United States and New York State constitutional questions were directly involved in the appeal from the Appellate Division. A stay of proceedings *de novo* in the Domestic Relations Court was also requested. (R., 10.)

5. On May 27, 1954, the Court of Appeals denied the appellant's motions and dismissed his appeal based on the provisions of Section 588(1) of the Civil Practice Act (*Anonymous* v. *Anonymous*, 307 N. Y. 671). (R., 38.)[7]

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[7] At this time there was an obvious conflict between Section 588 (1) of the Civil Practice Act and the New York State Constitution.

Section 588(1) provided that an appeal to the Court of Appeals as of right lies only:

> "(1) from a judgment or order of the appellate division, provided that the judgment finally determine an action, or the order finally determine a special proceeding, which action was originally commenced in the supreme court, a county court, a surrogate's court, the court of claims, or an administrative agency and provided further that
>
> (a) there be directly involved the construction of the constitution of the state or of the United States; or * * *."

(Clevenger's Practice Manual, 1953 Annual. Sec. 588, p. 6.11.)

Article VI, Section 7, Subsection 1, of the New York State Constitution provided that an appeal as of right could be taken to the Court of Appeals if there were directly involved the construction of the constitution of the state or of the United States, without placing any restrictions as to the court in which the action originated.

Thus under he provisions of the New York State constitution the appellant could appeal to the Court of Appeals even though the action had originated in the Domestic Relations Court, whereas, under the Civil Practice Act, he could not.

Section 588(1) was amended in 1954 to conform to the New York State constitution, effective September 1, 1954, too late to be of any aid to appellant herein. (McKinney's 1954 Sessions Laws of New York, Chapter 346.)

6. An application for a stay pending petition for certiorari was then made to the Supreme Court of the United States by means of an affidavit prepared by appellant, dated June 30, 1954. The application was reviewed by Mr. Justice Reed and was endorsed: "Denied. No Final Judgment." The appellant was notified of Mr. Justice Reed's decision in a letter dated July 8, 1954.

(C) Present proceedings forming basis of this appeal

1. The appellant herein had instituted a writ of prohibition proceeding against the Domestic Relations Court, *et al.*, in May, 1954 alleging numerous United States and New York State constitutional violations. The petition was dismissed after a hearing by Mr. Justice Benjamin J. Rabin, New York State Supreme Court, Special Term, Bronx County, without an adjudication of the constitutional questions. The decision appeared in the New York Law Journal of May 24, 1954 but no order was ever settled or entered in this proceeding. (R., 22, 37.)

2. In October, 1954, another writ of prohibition proceeding was instituted against the Domestic Relations Court, *et al.*, in the New York State Supreme Court, Special Term, Bronx County. In this October, 1954 proceeding the appellant again contended that the Domestic Relations Court, *et al.*, was exercising jurisdiction in violation of the United States and New York State Constitution and requested that said Court be absolutely restrained from holding any hearing or trial or entering and/or enforcing any order against appellant under the "Uniform Support of Dependents Law." (R., 32.)

3. The petition of the appellant in the New York State Supreme Court was again dismissed after a hearing. The decision was published in the New York Law Journal of November 15, 1954 and a final order entered on November 26, 1954. The decision and final order of the New York State Supreme Court as well as the decision and final order of the

Court of Appeals of the State of New York are contained in Appendix A.

4. As a direct result of the present writ of prohibition proceeding instituted against the Domestic Relations Court, *et al.*, the proceedings in the said Domestic Relations Court were abruptly terminated in a hearing held on December 22, 1954. The Court reserved decision. (R., 47, 48.)[8] It is to be noted that the relief requested in the writ of prohibition proceeding included a request that the Domestic Relations Court be restrained from enforcing any order. (R., 32.)

(D) How the federal questions were raised in the State Courts

The federal questions raised in the New York State Supreme Court, Special Term, Bronx County, are contained in the petition and affidavit submitted to said Court. (R., 21 *et seq.*) The questions were raised in the form appropriate for that Court and consisted in most part of specific challenges as to the constitutionality of the New York "Uniform Support of Dependents Law" based on the federal constitution. As an example of how these federal questions were raised in the New York State Supreme Court, Subsection (b) of Section 12 of appellant's petition and affidavit reads as follows (R., 28):

> "(b) The 'Uniform Support of Dependents Law' is in conflict with Article I, Section 10, Subsection 3, of the United States Constitution which prohibits compacts between states without the consent of Congress. To the best of deponent's information and be-

[8] On March 7, 1955 the Domestic Relations Court (Lorence, J.) issued an order against appellant for $20.00 weekly retroactive to December 23, 1954. The order provides that the money is to be held in escrow and the "Court may order payments to be made to petitioner at any time in its discretion, if Respondent fails to make payments promptly or fails to proceed with his appeal on the merits with due diligence."

> lief the 'Uniform Support of Dependents Law' of this state and similar laws of other states were never ratified by the United States Congress."

The substance of the other federal constitutional questions presented are contained in the record at pages 28-31.

The appellant also challenged the constitutionality of the California "Uniform Reciprocal Enforcement of Support Act." Thus in Section 5, Subsection (a), of the petition and affidavit submitted to the New York State Supreme Court it is stated (R., 23):

> "Without any basis and authority in law, the Domestic Relations Court, is at present continuing to entertain criminal charges and threats made at the instance of the State of California against deponent, even though the State of California has never obtained jurisdiction over the person or property of the deponent."

All of the questions presented to the New York State Supreme Court were likewise presented to the Court of Appeals of the State of New York. The federal questions were presented in the motion papers which were submitted to the Court of Appeals and also in copies of the papers which had been submitted to the New York State Supreme Court. (R., 6-8, 28-31.)

The allegations were not denied or controverted by the appellees, although this action was contested in both the New York State Supreme Court and the Court of Appeals of the State of New York.

(E) How the State Courts passed upon the federal questions

The New York State Supreme Court, Special Term, Bronx County (Rabin, *J.*), dismissed the appellant's petition for a restraining order against the Domestic Relations Court,

et al., after a hearing. In dismissing appellant's petition and denying relief, the New York State Supreme Court (Rabin, *J.*) necessarily passed upon the constitutional questions presented. *Rogers* v. *Alabama*, 192 U. S. 226, 230-1; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 289.

The Court of Appeals of the State of New York dismissed the appellant's appeal as of right from the judgment of the New York State Supreme Court upon the ground that there were questions other than the constitutional validity of a statute presented. (See Appendix A of this statement.)

The appellant's notice of appeal to the Court of Appeals of the State of New York taken under the provisions of Section 588(4) of the New York State Civil Practice Act [9] reads in part as follows (R., 17):

> "PLEASE TAKE FURTHER NOTICE that the petitioner's appeal herein is based solely upon United States and New York State constitutional questions. * * *"

The motion to certify constitutional questions made pursuant to Section 593 of the New York State Civil Practice Act (R., 2 *et seq.*) is a further indication that the sole and only questions submitted to the Court of Appeals on this appeal were constitutional questions.

By denying appellant's motion to certify constitutional questions and by dismissing his appeal on the grounds that

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[9] Section 588(4) of the New York State Civil Practice Act provides as follows:

Section 588. Appeals as of right. Appeal to the court of appeals as of right lies only * * *.

4. from a judgment of a court of record of original jurisdiction which finally determines an action, or an order of such court which finally determines a special proceeding, where the only question involved on the appeal is the validity of a statutory provision of a state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court.

there were questions other than those involving the validity of a statute the Court of Appeals of the State of New York necessarily passed upon the federal constitutional questions. *Rogers* v. *Alabama,* 192 U. S. 226, 230-1; *Dahnke-Walker Milling Co.* v. *Bondurant,* 257 U. S. 282, 289.

(F) The judgment is now final

As previously indicated an application for a stay in connection with petition for certiorari was made to this Court in June, 1954. This application was reviewed by Mr. Justice Reed and was denied on the grounds of "No Final Judgment." (Appendix C of this statement.)

Thereafter, and subsequent to Mr. Justice Reed's decision, the present action on which this appeal is based was instituted on October 19, 1954, in the New York State Supreme Court. This action is an independent lawsuit with respect to an order of restraint against the Domestic Relations Court, *et al.*

The final order of the New York State Supreme Court which dismissed appellant's petition for an order of restraint is a final judgment within the purview of 28 U. S. C., Sec. 1257(2). *Madruga* v. *Superior Court,* 346 U. S. 556, 557; *Bandini Co.* v. *Superior Court,* 284 U. S. 8, 14.

A state court judgment which conclusively disposes of a matter distinct from the general subject of the litigation and affecting only the parties to the particular controversy is considered as final for jurisdictional purposes by this Court. *Clark* v. *Williard,* 292 U. S. 112, 117-119.

Similarly, the judgment of the New York State Court of Appeals is final in that the appellant's appeal as of right was dismissed. *Clark* v. *Williard,* 292 U. S. 112, 117-119; *Department of Banking* v. *Pink,* 317 U. S. 264, 268; *Market Street R. Co.* v. *Railroad Commission,* 324 U. S. 548, 551.

The present judgment on which this appeal is being taken is therefore final, and as such is reviewable by this Court.

(G) New York State procedural requirements have been fully complied with

The granting of a restraining order under Article 78 of the New York State Civil Practice Act against a Justice of the Domestic Relations Court is not without precedent. *Gardner* v. *Domestic Relations Court, et al.*, 54 N. Y. S. 2d 672 (1945), Supreme Court, Special Term, Kings County (Swezey, *J.*).

Mr. Justice Swezey, in his decision granting the writ against a Justice of the Domestic Relations Court, stated (p. 673):

> "* * * The writ of prohibition is an extraordinary remedy for unusual cases, resorted to, not to correct errors, but in aid of substantial justice and to forbid the exercise of an unauthorized power. * * * 'It is far better to prevent the exercise of an unauthorized power than to be driven to the necessity of correcting the error after it is committed.'"

Other New York cases sustaining the use of an order of restraint or writ of prohibition are: *Hogan* v. *Court of General Sessions*, 296 N. Y. 1; *Culver Contracting Corp.* v. *Humphrey*, 268 N. Y. 26.

The direct appeal from the New York State Supreme Court to the Court of Appeals under the provisions of Section 588(4) of the Civil Practice Act was likewise entirely proper. *Lapchak* v. *Baker*, 298 N. Y. 89; *Teeval Co.* v. *Stern*, 301 N. Y. 346.

In *Lapchak* v. *Baker*, 298 N. Y. 89, the Court of Appeals of the State of New York made a careful distinction as to the constitutional questions arising out of the facts of the

case, and the constitutional questions arising out of statutory provisions. The decision reads in part as follows (p. 94):

> "The first issue is one in respect of the powers of this court. As we have already observed, the case comes here on a direct appeal from a court of original jurisdiction and so the constitutionality of the challenged statute is the only question that we can determine. * * *"

Inasmuch as the only questions raised on appeal to the Court of Appeals of the State of New York in the instant case were United States and New York State constitutional questions based on the statutory provisions of the "Uniform Support of Dependents Law" the appeal was entirely within the purview of Section 588(4) of the New York State Civil Practice Act.

(H) New York State remedies have been completely exhausted

It is now three years since the Domestic Relations Courts of the City of New York have claimed jurisdiction under the New York "Uniform Support of Dependents Law" and the California "Uniform Reciprocal Enforcement of Support Act" over the person and property of the appellant herein against his strong and continued protests. (R., 51, 52.)

Throughout this period the appellant has twice sought relief from the Supreme Court of the State of New York, once from the Appellate Division of the Supreme Court, and twice from the Court of Appeals of the State of New York. Each judicial proceeding was properly instituted and the constitutional questions, both federal and state, were properly presented to the aforementioned Courts, and, in each instance, relief was denied.

In a prior proceeding in this matter the appellees have stated (R., 24):

> "That the Appellate Division, First Department, has upheld the constitutionality of Chapter 807 of the New York Laws of 1949 known as the 'Uniform Support of Dependents Law.'"

The appellant did not concur with this contention at the time but this is now academic in view of the decisions of the Court of Appeals.

The Court of Appeals, the highest Court in the State of New York, has now upheld the constitutionality of the "Uniform Support of Dependents Law" in two separate and distinct proceedings instituted by appellant. *Anonymous* v. *Anonymous*, 307 N. Y. 671; and the present proceeding, 308 N. Y. 756. There is no likelihood that any further recourse can be had to the Court of Appeals or to the lower State courts on the constitutional questions involved. The appellant's remedies within the State of New York have therefore been completely exhausted.[10]

THE QUESTIONS ARE SUBSTANTIAL.

It is the contention of the appellant that the issues presented by this appeal are novel and of substantial public importance, inasmuch as they deal with compacts between States without the consent of Congress, a novel interstate judicial system created by compact among the several States, deprivation of liberty and property without due process of law, and denial of equal protection of the laws. The questions presented have not heretofore been passed upon by this Court.

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[10] It is to be noted that in the order issued against the appellant by the Domestic Relations Court, (Lorence, J.) on March 7, 1955, it is indicated that an appeal may be taken on the merits, the presumption being that the United States and New York State constitutional questions with respect to the "Uniform Support of Dependents Law" had been disposed of within the State of New York.

(A) Compacts between States without the consent of Congress

> "No State shall, without the Consent of Congress, * * * enter into any Agreement or Compact with another State * * *." (Article I, Section 10, Subsection 3, United States Constitution.)

The words "agreement" and "compact" have been defined as follows:

> "If there is a verbal understanding, to which both parties have assented, and upon which both are acting, it is an 'agreement.' And the use of all these terms, 'treaty,' 'agreement,' 'compact,' show that it was the intention of the framers of the Constitution to use the broadest and most comprehensive terms." *Holmes* v. *Jennison*, 14 Pet. 540, 572.

> "The terms 'agreement' or 'compact' taken by themselves are sufficiently comprehensive to embrace all forms of stipulation, written or verbal, and relating to all kinds of subjects." *Virginia* v. *Tennessee*, 148 U. S. 503, 517-518.

The California "Uniform Reciprocal Enforcement of Support Act" and the New York "Uniform Support of Dependents Law" come well within the definition of a compact. In effect, the States of California and New York by mutual legislation have compacted and/or agreed to cooperate with each other and with other States. Other uniform laws such as the "Uniform Sales Act" require mere legal conformity whereas the reciprocal support laws in question are inoperative unless there is active cooperation among the States.

A comparison of some of the pertinent compact provisions of these laws follow:

CALIFORNIA	NEW YORK
Uniform Reciprocal Enforcement of Support Act	**Uniform Support of Dependents Law**
Section 1651.	Section 9.
This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.	* * * This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.
(The above provisions are in effect offers by each State to actively cooperate with other States that have enacted similar laws.)	
Section 1653(1).	Section 2(a).
"State" includes any state, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.	"State" shall mean and include any state and territory of the United States and the District of Columbia.
(The above provisions define what States and territories may become members of the compact.)	
Section 1653(2).	Section 2(i).
"Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.	"Initiating state" shall mean the state of domicile or residence of the petitioner.
Section 1653(3).	Section 2(j).
"Responding state" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.	"Responding state" shall mean the state wherein the respondent resides or is domiciled or found.

(If one State is an initiating State the clear inference is that some other State must be a responding State and that in order for these reciprocal laws to be effective the active cooperation of some foreign State or States is required.)

Thus under these reciprocal interstate support laws the State of California can compel one of its residents, or even any person found within the State, to abide by obligations imposed by the State of New York, and in return the State of New York will reciprocate and enforce the California support laws on any person within the jurisdiction of the State of New York.

The legislative declaration will take the form of an agreement or compact when it recites some consideration for it from the other party affected by it. *Virginia* v. *Tennessee*, 148 U. S. 503, 520.

The rights of States to enter into compacts with each other is expressly recognized by the Constitution but it is guarded in its exercise by a single limitation or restriction, requiring the consent of Congress. *Poole* v. *Fleeger*, 11 Pet. 185, 209; *Virginia* v. *Tennessee*, 148 U. S. 503, 525. The Constitution makes no provision as to the time when the consent of Congress shall be given or the mode or form by which it shall be signified. *Green* v. *Biddle*, 8 Wheat. 1, 85-86. While the consent will usually precede the compact or agreement, it may in some instances, be given subsequently where the agreement relates to matters which could not be well considered until its nature is fully developed. *Virginia* v. *Tennessee*, 148 U. S. 503, 521.

The New York "Uniform Support of Dependents Law" and the California "Uniform Reciprocal Enforcement of Support Act" have not as yet received Congressional sanction and this lack of consent by Congress makes these reciprocal interstate support laws, null, void, and of no effect.[11]

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[11] At the time of the enactment of the New York "Uniform Sup-

Questions relating to interstate compacts heretofore adjudicated by this Court have involved contiguous States or States having regional interests. With respect to contiguous States, compacts with the consent of Congress, have at times been found to be desirable, especially so, when they furnish a means of settling border disputes. *Virginia* v. *Tennessee*, 148 U. S. 503. Compacts with the consent of Congress, involving States with regional interests have also at times been found to be desirable inasmuch as the regions are less than the nation and greater than any one State.[12]

In the instant case, however, the States that have entered into this compact (California and New York) are at opposite extremes of our national borders, approximately 3,000 miles apart. This compact involves neither border problems nor regional interests. The sole basis of the compact between California and New York is comity in political and social views.

Even if Congressional approval were to be obtained for the compact between California and New York serious constitu-

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port of Dependents Law" there were serious doubts as to its constitutionality. Some of these doubts are contained in a lengthy magazine article appearing in the Saturday Evening Post of April 19, 1952, page 19, *et seq.*, entitled "A New Trap for Runaway Husbands."

> Page 21, column 1. "It's hopeless, authorities told her. We've tried to get a bill through Congress, but it's unconstitutional. The Government can't order one state to act as a collecting agency for another."
>
> Page 21, column 2. "To detour the unconstitutionality of a Federal law, a reciprocal state law was produced."
>
> Page 19, column 2. "The law beats the axiom that a person cannot be tried in one state for an offense committeed in another."

[12] The Compact Clause of the Constitution; Frankfurter and Landis; 34 Yale Law Journal 685, 707:

> "We are dealing with regions, like the Southwest clustering about the Colorado River, or the States dependent upon the Delaware for water, which are organic units in the light of a common human need like water supply. The regions are less than the nation and greater than any one State."

tional questions would arise on other grounds, the most important of which would be whether the compact constitutes an undue encroachment on the federal powers (*Virginia* v. *Tennessee,* 148 U. S. 503, 519) and/or the constitutional rights of the individual citizen.

The questions arising out of the compact between California and New York are of substantial public importance and an adjudication of these novel questions by this Court would be helpful in providing authoritative guidance for the several States.

> "Just as this Court has power to settle disputes between States where there is no compact, it must have final power to pass upon the meaning and validity of compacts. * * * To determine the nature and scope of obligations as between States, * * * is the function and duty of the Supreme Court of the Nation." *West Virginia ex rel. Dyer* v. *Sims,* 341 U. S. 22, 28.

(B) A novel interstate judicial system created by compact among the several States

> "The judicial Power shall extend to all Cases, in Law and Equity, * * * between Citizens of different States; * * *." (Article III, Section 2, Subsection 1, United States Constitution.)

This clause has been construed as conferring concurrent jurisdiction on federal and State courts in controversies between citizens of different States. *Dodge* v. *Woolsey,* 59 U. S. 331, 346-347. The jurisdiction of federal courts over controversies between citizens of different States cannot be impaired by State laws prescribing modes of redress in their courts, or which regulate the distribution of their judicial power. *Hyde & Oglesby* v. *Stone,* 61 U. S. 170, 175; *Payne* v. *Hook,* 74 U. S. 425, 430.

The jurisdiction of the courts of the United States, in controversies between citizens of different States, cannot be ousted or annulled by statutes of the States, assuming to confer it exclusively on their own courts. *Hess* v. *Reynolds*, 113 U. S. 73, 77.

By means of the California-New York compact a novel interstate judicial system has been created, for controversies between citizens of different States, with unusual procedural requirements. A case illustration of this novel interstate judicial procedure follows:

CALIFORNIA	NEW YORK
(1) Complainant files a petition and complaint alleging that respondent has duty of support. (Sec. 1676.) This is transmitted to New York.	
	(2) A hearing is held and the respondent may deny the allegations in the petition and complaint. (Sec. 6(f).)
(3) Additional testimony is taken from complainant.	
	(4) The respondent may request the right to cross-examine by interrogatories. (Sec. 6(i).)
(5) Complainant answers interrogatories.	
	(6) Trial is terminated.[13]

[13] The denials of due process inherent in this interstate judicial system are discussed under the caption, "Deprivation of liberty and property without due process of law," *infra*.

This novel interstate judicial system created by the California-New York compact in effect circumvents the federal judiciary. Other States have created similar interstate judicial systems and a new body of civil and criminal law is being created that is neither State nor federal.

As a general rule the courts of both the federal and State governments will not enforce the penal or criminal laws of another State or country. *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, 289-290.

Nevertheless, Section 1678 of the California "Uniform Reciprocal Enforcement of Support Act" provides:

> "When the court of this State, acting either as an initiating or responding state, has reason to believe that the defendant may flee the jurisdiction it may (a) as an initiating state request in its certificate that the court of the responding state obtain the body of the defendant by appropriate process if that be permissible under the law of the responding state; or (b) as a responding state, obtain the body of the defendant by appropriate process."

By means of the provisions contained in the "Uniform Reciprocal Enforcement of Support Act" individuals can be extradited to other States, although they were not present in the demanding State at the time the alleged crime was committed. *Ex parte Coleman*, (Texas) 245 S. W. 2d 712. (Extradition from Texas to California.)

The extent to which this new body of interstate law deviates from the federal law is indicated in the decision of *State ex rel. Bryant* v. *Fleming*, (Tennessee) 260 S. W. 2d 161:

> "Apparently the relator relies solely upon the fact that the face of the record discloses his absence from the demanding State at or about the time of the alleged commission of the offense charged. He relies in

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support of his contention upon the authority of the case of Hyatt v. New York, 188 U. S. 691, 23 S. Ct. 456, 459, 47 L. Ed. 657, and cases there cited as a bar to the extradition in this case.

"Prior to the passage in this State (and many other States) of the 'Uniform Reciprocal Enforcement of Support Act,' and other statutes to be hereinafter mentioned, the authority relied on would have constituted an adequate bar to the issuance of the rendition warrant herein but since the passage of these acts we think that this authority is now inapplicable." [14]

Thus in the case cited above the interstate-compact law has taken precedence over the federal law.

The interstate enforcement of support duties based on these interstate reciprocal laws has also run into difficulties caused by varying interpretations, lack of understanding and occasional lack of cooperation. *Pennsylvania* v. *Warren,* (Maryland) 105 Atl. Rep. 2d 488, 489-490.

An example of the confusion that is being created is illustrated in the case of *Pennsylvania* v. *Mong,* (Ohio) 117 N. E. 2d 32, wherein the Ohio courts were requested to compel an Ohio citizen to make support payments under a Pennsylvania law notwithstanding an Ohio statute which specifically relieved the Ohio citizen of liability for such payment.

The importance of the question of proper distribution of judicial authority as between the federal government and the States has been recognized at the time of the adoption of the Constitution. Thus quoting from an article by Alexander

[14] The Supreme Court of Colorado has taken a different view and will not permit extradition to the demanding state for crime of failure to support when the defendant was not present in the demanding state at the time the alleged crime was committed. McKnight v. Forsyth, 266 P. 2d 770.

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Hamilton dealing with the extent of the powers of the judicial department (The Federalist—Publisher, Henry Holt & Co., New York, 1898, pp. 531-532):

> "The mere necessity of uniformity in the interpretation of the national laws decides the question. Thirteen independent courts of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed."

Again quoting Alexander Hamilton at page 533 of the Federalist, *supra*:

> "A method of terminating territorial disputes between the States, under the authority of the federal head, was not unattended to, even in the imperfect system by which they have hitherto held together. But there are many other sources, besides interfering claims of boundary, from which bickerings and animosities may spring up among the members of the Union. * * * And though the proposed Constitution establishes particular guards against the repetition of those instances which have hitherfore made their appearance, yet it is warrantable to comprehend that the spirit which produced them will assume new shapes that could not be foreseen nor specifically provided against. Whatever practices may have a tendency to disturb the harmony between the States are proper objects of federal superintendence and control."

(C) Deprivation of liberty and property without due process of law

> "* * * nor shall any State deprive any person of life, liberty or property without due process of law; * * *." (Fourteenth Amendment, United States Constitution.)

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> "Due process of law in each particular case means such an exercise of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs." Cooley, Const. Lim., 441.

The California "Uniform Reciprocal Enforcement of Support Act" is essentially a criminal law as indicated by the criminal and extradition provisions contained upon the face of the statute. The New York "Uniform Support of Dependents Law" although it purports to be a civil law is essentially a *quasi*-criminal law as evidenced by Exhibits A (Warrant of Arrest) and C (Notice from District Attorney) —pages 33 and 35 of the record of the Court below.[15]

The constitutional questions raised in the Court below included both the Sixth Amendment and the due process clause of the Fourteenth Amendment to the United States Constitution.

The Sixth Amendment is not ordinarily applicable to the States although it is recognized that a denial of the rights stipulated in the Sixth Amendment may in a given case amount to a deprivation of due process. *Betts* v. *Brady*, 316 U. S. 455, 461-462.

The Sixth Amendment was brought into question in the Court below inasmuch as the appellant herein, a citizen of New York, was being tried on charges arising out of the criminal laws of a foreign State (California). The appellant believes that if this interstate trial is justified on the basis of a national problem then the appellant should be en-

[15] Both the Warrant of Arrest and the Notice from the District Attorney were issued against the appellant without justifiable cause.

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titled to the benefit of the national laws, including the Sixth Amendment.

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defense." (Sixth Amendment, United States Constitution.)

Should the Sixth Amendment be found applicable to the instant case then the trial procedures outlined in the New York "Uniform Support of Dependents Law" and the California "Uniform Reciprocal Enforcement of Support Act" are a mere sham and pretense, inasmuch as these procedures are in direct conflict with substantially all of the provisions of the Sixth Amendment. Even if the Sixth Amendment is not applicable serious due process considerations are presented, such as:

(1) *Confrontation of witnesses*

The California "Uniform Reciprocal Enforcement of Support Act" is silent on the subject of confrontation of witnesses. The New York "Uniform Support of Dependents Law" provides in Section 6(e) as follows: "It shall not be necessary for the petitioner or petitioner's witnesses to appear personally at such hearing."

The right of confrontation did not originate in the Sixth Amendment but was a common law right. *Salinger* v. *United States*, 272 U. S. 542, 548.

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Although the second trial in the Domestic Relations Court is not directly brought into question on this appeal, the extent to which the appellant has been injured can best be understood by references to this second trial. The facts are within the knowledge of the appellees.

Inasmuch as the appellant did not have the right to confront witnesses he was subjected to an unusually lengthy and costly second trial. Instead of having his day in Court and disposing of everything at one time, the appellant was compelled to wait three months after denying the allegations of the complainant, then wait another three months for answers to written interrogatories, and then be denied the right to follow up the answers to the interrogatories. Thus the record of the second trial in the Domestic Relations Court, is lengthy, costly and incomplete as to facts. If it had been possible to confront and cross-examine the complainant the material facts would have been elicited in a short period of time and the facts would have been more accurate and complete.

(2) *Place of trial*

Both the California "Uniform Reciprocal Enforcement of Support Act" (Section 1676, *et seq.*) and the New York "Uniform Support of Dependents Law" (Sec. 6) make provision for part of the trial to take place in the Court of a foreign State.

This is an unusual concept and runs contrary to the decisions of this Court in cases relating to federal matters. An accused cannot be tried in one district when the offense was committed in another. *Salinger* v. *Loisel*, 265 U. S. 224, 232. The locality in which the offense is charged to have been committed determines the place and court of trial. *Beavers* v. *Henkel*, 194 U. S. 73, 83.

The outline of the trial procedure contained in this statement under the caption "A novel interstate judicial system

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created by compact" will indicate that an unusual hardship is being imposed on defendants in these actions in that they are being subjected to an unusual lengthy and costly trial.

Prosecution too long delayed often amounts to persecution, and to publicly accuse one of crime casts a cloud upon the reputation and standing of the accused in the community, and for that reason it has always been the policy of our law to guarantee the accused a speedy public trial. *State ex rel. Micheel* v. *Vamos,* (Ohio) 60 N. E. 2d 305.

(3) *Arbitrary presumptions of guilt without provision for reasonable defenses or counterclaims*

Both the California and New York reciprocal interstate support laws define the obligation of support in broad and general terms. Thus Section 1653(6) of the California law states that the duty of support "includes any duty of support imposed or imposable by law." Section 6(a) of the New York law provides that a petitioner in filing her petition state her circumstances and the circumstances of the respondent and request that the respondent be compelled to furnish support. No provision is made in either the California or New York law for any reasonable defenses to controvert any alleged charges.

Thus in the instant case the appellant was brought to trial in the Domestic Relations Court of the City of New York in May 1952. His attorney interposed the defenses that the child was removed from the State of New York under circumstances that could be construed as kidnapping and that the New York proceeding was being used as an adjunct to a divorce action in the State of California. All defenses were ignored and an order was issued against appellant on the basis of an incomplete trial. The Appellate Division of the Supreme Court subsequently reversed the order of the Domestic Relations Court on the grounds of "the informality of the record, the absence of any answer to the petition, the absence

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of any findings, formal or informal, and the ambiguity in the record as to whether respondent-appellant consented to the order. * * * " *Anonymous* v. *Anonymous,* 283 App. Div. 770. (See Appendix C of this statement.)

In the second trial held in the Domestic Relations Court all defenses and counterclaims interposed by the attorney for appellant were likewise ignored, the trial was prematurely terminated before all the facts were obtained, and another order larger in amount than the first one was arbitrarily issued against the appellant, on the basis of a lengthy, costly, and incomplete record.

A statute so vague and indefinite, in form and as interpreted, as to fail to give fair notice as to what acts will be punished, violates an accused's rights under procedural due process. *Winters* v. *New York,* 333 U. S. 507, 509-510.

(4) *Other due process denials*

Numerous denials of due process occurred during the second trial in the Domestic Relations Court. Although these denials were due mainly to the actions of the individual justice rather than to the specific provisions of the reciprocal interstate support laws, they are listed for the purpose of indicating the injury and harm that have been caused the appellant and that are made possible by these reciprocal interstate support laws.

1. The second trial in the Domestic Relations Court was commenced by the issuance of a warrant of arrest against appellant issued prior to the issuance of a summons. (R., Exhibits A and B.)

2. The appellant was denied the right to call any witnesses in his behalf.[16]

[16] This denial of due process occurred in the December, 1954 hearing in the Domestic Relations Court. The hearings in the Domestic Re-

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3. The appellant, in spite of his constitutional objections, was compelled to testify as a witness against himself, under threat of contempt proceedings.[17]

4. An unusual costly and lengthy record of the proceedings was established. For example, when the appellant submitted written interrogatories, in September, 1954, he was personally ordered to be present at the hearing even though he was represented by an attorney, and 36 pages of minutes were established for the sole purpose of reviewing the interrogatories prior to transmission to California.

5. At no time during the second trial in the Domestic Relations Court was the appellant advised as to what crime or other wrongful act he had committed in either the States of New York or California.

(D) Denial of equal protection of the laws

> "* * * nor shall any State * * * deny to any person within its jurisdiction the equal protection of the laws." (Fourteenth Amendment, United States Constitution.)
>
> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." (Article IV, Section 2, United States Constitution.)

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lations Court were arbitrarily terminated at that time in view of the fact that the present writ of prohibition proceeding was then pending in the Court of Appeals of the State of New York. The termination of proceedings in the Domestic Relations Court was used as one of the arguments of the appellees in this action before the Court of Appeals. (R., 42, 43.) As previously indicated the appellant had requested that the Domestic Relations Court be restrained from enforcing any order against appellant and the termination of proceedings in the Domestic Relations Court would therefore have no effect on this proceeding.

[17] Same as footnote 16.

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In the instant case a curious anomaly exists. The appellant herein is being subjected in New York State to the criminal laws of the State of California. Yet it is interesting to note that under the laws of California the divorced and remarried wife is primarily liable for support of the child.

The fact that the former wife of appellant has complete and sole custody of the child is undisputed. Section 196 of the California Civil Code provides that the parent entitled to the custody of a child is primarily liable for the support of the child. Under Section 208 of the California Civil Code a parent is not bound to compensate the other parent for the voluntary support of his child without an agreement for compensation. Section 209 of the California Civil Code provides that where a husband receives his wife's children by a former marriage into his family and supports them it is presumed he does so as a parent.[18]

Where by divorce decree custody of a minor child is awarded to the mother without any provision for support of the child by the father and the child in such custody is being supported in a proper manner, as between the parents, the immediate legal duty of support rests upon the mother as long as such conditions continue. (California case.) *In re Catalini*, (1946) 165 P. 2d 250, 72 C. A. 2d 662.

Thus if the appellant herein were a resident of the State of California he would not have been subjected to the harassment and litigation to which he is being subjected to by the State of New York at the instigation of the State of California.

The appellant is also being denied the equal protection of the laws in another respect.

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[18] West's Annotated California Code (1954). Volume on Section 193 *et seq.* of California Civil Code.

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In the instant case, the record of prior proceedings heretofore had herein, will indicate that the appellant who is a native born citizen of the State of New York was married to the complainant on January 24, 1942, in the State of New York. A child of said marriage was born on July 20, 1944 in the State of New York. Throughout the entire period of said marriage and prior to abandonment by the wife, the appellant and his wife had been citizens and residents of the State of New York.

Prior to the enactment of the "Uniform Support of Dependents Law" an absconding wife who sought support for herself and/or a child would have been required to submit to the jurisdiction of the New York State courts where the question of custody with respect to the child would have been properly adjudicated.[19]

By means of the "Uniform Support of Dependents Law," however, the State of New York in effect condones the wrongful acts of an absconding wife, and grants her rights that she would not otherwise have had. This is all done at the expense of the abandoned husband-father who has already suffered a substantial injury in the loss of his child.

It is the contention of the appellant herein that citizens (husbands or wives) should be secure in their homes and their families in the State wherein they were born, married, raised children, and have always resided during the period of the marriage. Public policy would dictate that if a wife

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[19] In another case involving the reciprocal interstate support laws some of the facts were substantially similar to that of the instant case. The wife left her husband in North Carolina and took their children to Arkansas where she obtained a divorce and married another. Mahan v. Read (North Carolina) 83 S. E. 2d, 706 (1954). The decision was in favor of the husband the court ruling in part:

> "The minor children are not without remedy. A properly constituted action may be brought in the Courts of North Carolina in their name and for their benefit. In connection therewith, custody between parents could be determined * * *."

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can run off to a foreign State, deprive a father of his child, and be encouraged in her acts by assurances that the burden of support will be placed on the abandoned husband-father, then there appears to be a real threat to the maintenance and security of the American family.

The questions contained under this caption are of substantial importance in that "equal justice to all is the basic principle upon which justice under law rests." *Pierre* v. *Louisiana*, 306 U. S. 354, 358.

CONCLUSION.

The constitutional violations alleged in this jurisdictional statement have caused irreparable damage and harm to the appellant herein in the loss of his family, and injury to his character and reputation in the community, as well as considerable mental anguish and suffering. There seems to be no end to the litigation and harassment to which the appellant has been and is being subjected, based on the aforementioned reciprocal interstate laws.

In a recent case of this Court, *May* v. *Anderson*, 345 U. S. 528, 533, it was recognized that custody rights over children are far more precious than property rights.

Yet the reciprocal interstate laws in question disregard the question of custody completely. The appellant who had always adequately supported his child until the time that she was unlawfully removed from the State of New York contends that if there is an obligation to support his child under the facts of this case such obligation should be based on the rightful pursuit of legal proceedings and not on arbitrary threats and illegal methods.

The appellant objects most strongly to the criminal inferences that may be drawn from these reciprocal interstate laws. Such an imputation in the eyes of his child, is in com-

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plete violation of all standards of decency and law, especially so, when the appellant herein has committed no wrongful act, morally or legally, in either the States of New York or California.

But without minimizing the importance of this appeal to the individual appellant, the questions herein involved are of substantial public concern. The several States are inadvertently circumventing the clear language and intent of the compact clause of the Constitution. A new body of interstate-compact law has been created, which is neither State nor federal, and in at least one instance (*State ex rel. Bryant* v. *Fleming,* (Tennessee) 260 S. W. 2d 161) has superseded the federal authority. Concepts of justice are being practiced under authority of these interstate support laws that are repugnant to our Constitution and to our form of government (pp. 26 *et seq.*).

The appellant therefore prays that this Court take jurisdiction of this cause inasmuch as the questions presented are novel, have not heretofore been passed upon by this Court, and there presently exists an urgent public need for authoritative judicial guidance by this Court on the issues herein presented.

Respectfully submitted,

PHILIP LANDES,
Appellant *pro se,*
Room 1212,
521 Fifth Ave.,
New York, N. Y.

May, 1955.

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APPENDIX A.

Opinion of the Court of Appeals.

Advance Reports 308 N. Y. 756.

COURT OF APPEALS OF THE STATE OF NEW YORK.

In the Matter of the Application of

PHILIP LANDES,

Appellant,

—against—

DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK, *et al.*,

Respondents.

Submitted January 3, 1955; decided January 13, 1955.

Motion for a certificate that a constitutional question is involved and for a stay pending an appeal, taken on alleged constitutional grounds, from an order of the Supreme Court at Special Term (Rabin, *J.*) entered November 26, 1954, in Bronx County, (1) denying an application under Article 78 of the Civil Practice Act for an order restraining respondents from continuing with proceedings commenced in the Domestic Relations Court wherein "Anonymous" was petitioner and "Anonymous" was respondent and wherein it was sought to charge said "Anonymous" with liability for support under the Uniform Support of Dependents Law (L. 1949, ch. 807, as amd.) and (2) dismissing this proceeding under Article 78.

Philip Landes, in person, for motion.

Seymour B. Quel opposed.

Motion denied and, on the court's own motion, appeal dismissed upon the ground that there are questions other than the constitutional validity of a statute presented (Civ. Prac. Act, Sec. 588, subd. 4).

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APPENDIX A (Continued).

Order of the Court of Appeals.

STATE OF NEW YORK,
IN COURT OF APPEALS.

At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the thirteenth day of January, A.D. 1955.

Present, HON. ALBERT CONWAY, *Chief Judge, presiding.*

Mo. No. 13

In the Matter of
ANONYMOUS,

Respondent,

—vs.—

ANONYMOUS,

Appellant.

In the Matter of the Application of
PHILIP LANDES,

Appellant,

For an Order of Restraint,

—vs.—

THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK, Family Court Division, County of Bronx, & ano., &c.,

Respondents.

A motion having heretofore been made herein upon the part of appellant for a stay and for a certificate that a constitutional question is involved on the appeal herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied and, on the Court's own motion, appeal dismissed upon the ground that there are questions other than the constitutional validity of a statute presented (C.P.A. sect. 588, subd. 4).

A copy

GEARON KIMBALL,
Deputy Clerk.

[SEAL]

APPENDIX B.

Opinion of New York State Supreme Court.

NEW YORK STATE SUPREME COURT—SPECIAL TERM, BRONX COUNTY.

(The New York Law Journal, Monday, November 15, 1954.)

BY MR. JUSTICE RABIN.

Anonymous v. Anonymous (Landes v. Lorence)—Motion to dismiss the petition is granted (see memorandum decision on petitioner's application for an order pursuant to article 78, filed simultaneously herewith. Settle order.

Anonymous v. Anonymous (Landes v. Lorence)—Motion for a restraining order pursuant to article 78 is denied. A prior application for similar relief was determined adversely to petitioner.* The so-called "newly discovered evidence of

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* This decision appeared in The New York Law Journal, Monday, May 24, 1954, but no order was ever settled or entered. The decision reads as follows: Landes v. Domestic Relations Court of the City of N. Y. —The cross-motion to dismiss the petition for insufficiency is granted and the petition is dismissed. The application seeks to restrain the hearing of a proceeding pending before the respondent court, or other proceedings involving the petitioner upon charges pursuant to the Uniform Support of Dependents Law. The respondent court, and the justice thereof, are competent to entertain the proceeding and the issues tendered by the application, and to determine the constitutional questions presented. Indeed the hearing was directed to proceed by order of the Appellate Division. The contentions urged afford no ground for an order of prohibition.

fact and law" is insufficient to warrant a different disposition. At best, the matters referred to may be considered as relating to the merits only and are properly within the jurisdiction of the Domestic Relations Court, where the matter should proceed in accordance with the direction of the Appellate Division.

APPENDIX B (Continued).

Order of New York State Supreme Court.

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of Bronx, at the County Courthouse, 851 Grand Concourse, in the Borough of Bronx, City and State of New York, on the 24th day of November, 1954.

Present: HON. BENJAMIN J. RABIN, *Justice.*

In the Matter of
ANONYMOUS,
Petitioner-Respondent,
—against—
ANONYMOUS,
Respondent-Appellant.

In the Matter of the Application of
PHILIP LANDES,
Petitioner,
For an Order of Restraint,
—against—
THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK, Family Court Division, County of Bronx, HON. LOUIS LORENCE, individually and as a Justice thereof,
Respondents.

The petitioner having moved this Court by order to show cause for an order pursuant to Article 78 of the Civil Practice Act, restraining the said respondents and each of them, from continuing with a hearing, trial, or other proceedings, charging the said Philip Landes with liability of support under the "Uniform Support of Dependents' Law" and from any similar action or proceeding upon grounds described in his affidavit or similar thereto, and the respondents having moved to dismiss the application, and the matter having duly come on before me to be heard,

Now, on reading and filing the order to show cause, dated October 19, 1954, together with the affidavit of Philip Landes, sworn to the 19th day of October, 1954, annexed thereto, in support of said application, and the notice of motion dated November 4, 1954, together with the affidavit of Janet H. Lewin, sworn to the 3rd day of November, 1954, thereto annexed, in opposition thereto, and in support of the respondents' motion, and the motions having been duly submitted, and due deliberation having been had thereon, upon the decision and opinion of the Court filed herein, it is

ORDERED, that the application for a restraining order against the respondents and each of them to Article 78 of the Civil Practice Act is in all respects denied; and it is further

ORDERED, that the motion of the respondents, to dismiss the proceeding be and the same hereby is granted and the proceeding is hereby dismissed, without costs.

Enter,

B. J. R.,
J. S. C.

APPENDIX C.

Appellate Opinions in Prior Proceedings.

Opinion of Appellate Division.

NEW YORK STATE SUPREME COURT—FIRST DEPARTMENT.

(Reported in 283 App. Div. 770, Case No. 4.)

Anonymous, res, v. Anonymous, ap—The order requiring the respondent-appellant father to pay $65 per month for support of his child unanimously reversed and the matter remitted to the Domestic Relations Court for proceedings de novo following the filing of the wife's petition. The appeal from the order denying the respondent-appellant's motion for a rehearing unanimously dismissed as academic. No costs. In view of the informality of the record, the absence of any answer to the petition, the absence of any findings, formal or informal, and the ambiguity in the record as to whether respondent-appellant consented to the order the proceedings should be remitted. Thus the deficiencies may be supplied and a record made upon which the husband's objections may be properly considered. Settle order on notice.

Present, Peck, P.J., Callahan, Breitel, Bastow and Botein, JJ.

APPENDIX C (Continued).

Appellate Opinions in Prior Proceedings.

Opinion of the Court of Appeals of the State of New York.

(Reported in 307 N. Y. 671.)

ANONYMOUS,

Respondent,

—vs.—

ANONYMOUS,

Appellant.

Court of Appeals of New York.

May 27, 1954.

Appeal from Supreme Court, Appellate Division, First Department, 283 App. Div. 770, 128 N. Y. S. 2d 571.

Proceedings were brought against father to compel him to pay for support of his child.

The Domestic Relations Court of the City of New York, Family Court Division, County of Bronx, Diserio, *J.*, entered an order requiring father to pay $65 a month for support of his child.

The Appellate Division on March 22, 1954, reversed the order of the Domestic Relations Court, remitted the matter to the Domestic Relations Court for proceedings de novo, and dismissed as academic an appeal from an order denying a motion for rehearing.

The father appealed to the Court of Appeals, and a motion was made for a stay and for a certificate that a constitutional question was involved.

Motion (a) for a stay and (b) for a certificate that a constitutional question is involved on the appeal herein denied, and, on Court's own motion, appeal dismissed upon the

ground that no appeal lies as of right. Civil Practice Act, Sec. 588, subd. 1.

APPENDIX C (Continued).

Appellate Opinions in Prior Proceedings.

Opinion of Mr. Justice Reed.

OFFICE OF THE CLERK,

SUPREME COURT OF THE UNITED STATES,
WASHINGTON 13, D. C.

July 8, 1954.

Philip Landes, Esquire
New York, New York.

Dear Sir:

Your application for stay in the case of Anonymous against Anonymous was forwarded to Mr. Justice Reed in Kentucky and has today been returned to this office with the endorsement:

"Denied. No Final Judgment".

Yours truly,

HAROLD B. WILLEY, Clerk

By E. P. CULLINAN
E. P. Cullinan,
Assistant.

EPC:mr

APPENDIX D.

New York—Uniform Support of Dependents Law.

LAWS OF NEW YORK.—By Authority

CHAPTER 807 of the Laws of 1949, as Amended

AN ACT authorizing and prescribing the procedure for civil proceedings to compel the support of dependent wives, children and poor relatives within and without the state, and repealing chapter seven hundred ninety of the laws of nineteen hundred forty-eight, entitled "An act to amend the children's court act of the state of New York and the domestic relations court act of the city of New York, in relation to conferring additional jurisdiction and powers upon all children's courts and the family court of the city of New York in support proceedings against persons residing in other states and territories of the United States having substantially similar or reciprocal laws"

Became a law April 25, 1949, with the approval of the Governor. Passed, by a majority vote, three-fifth being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

UNIFORM SUPPORT OF DEPENDENTS LAW

Section 1. Short title; purpose.
2. Definitions.
3. Persons legally liable for support of dependents.
4. Jurisdiction and powers of court.
5. Cases in which proceedings are maintainable.
6. Procedure.
7. Duty of petitioners' representatives.
8. Construction of act.
9. Uniformity of interpretation.
10. Separability.

NEW YORK—UNIFORM SUPPORT OF DEPENDENTS LAW.

Section 1. Short title; purpose. This act may be cited and referred to as the uniform support of dependents law.

The purpose of this uniform act is to secure support in civil proceedings for dependent wives, children and poor relatives from persons legally responsible for their support.

Sec. 2. Definitions. As used in this act, unless the context shall require otherwise, the following terms shall have the meanings ascribed to them by this section:

(a) "State" shall mean and include any state and territory of the United States and the District of Columbia.

(b) "Court" shall mean and include a family court, domestic relations court, children's court, municipal court and any other court, by whatever name known, in any state having reciprocal laws or laws substantially similar to this act upon which jurisdiction has been conferred to determine the liability of persons for the support of dependents within and without such state.

(c) "Child" includes a step child, foster child or legally adopted child and means a child actually or apparently under seventeen years of age, and a child over seventeen years of age who is unable to maintain himself and is likely to become a public charge.

(d) "Dependent" shall mean and include a wife, child, mother, father, grandparent or grandchild who is in need of and entitled to support from a person who is declared to be legally liable for such support by the laws of the state or states wherein the petitioner and the respondent reside.

(e) "Petitioner" shall mean and include each dependent person for whom support is sought in a proceeding instituted pursuant to this act.

(f) "Respondent" shall mean and include each person against whom a proceeding is instituted pursuant to this act.

(g) "Petitioner's representative" shall mean and include a corporation counsel, county attorney, state's attorney, commonwealth attorney and any other public officer, by whatever title his public office may be known, charged by law with the duty of instituting, maintaining or prosecuting a proceeding under this act or under the laws of the state or states wherein the petitioner and the respondent reside.

(h) "Summons" shall mean and include a subpoena, warrant, citation, order or other notice, by whatever name known, provided for by the laws of the state or states wherein the petitioner and the respondent reside as the means for requiring the appearance and attendance in court of the respondent in a proceeding instituted pursuant to this act.

(i) "Initiating state" shall mean the state of domicile or residence of the petitioner.

(j) "Responding state" shall mean the state wherein the respondent resides or is domiciled or found.

Sec. 3. Persons legally liable for support of dependents. For the purpose of this act:

(a) A husband in one state is hereby declared to be liable for the support of his wife and any child or children under seventeen years of age and any other dependent residing or found in the same state or in another state having substantially similar or reciprocal laws, and, if possessed of sufficient means or able to earn such means, may be required to pay for their support a fair and reasonable sum according to his means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this act.

(b) A mother in one state is hereby declared to be liable for the support of her child or children under seventeen years of age residing or found in the same state or in another state

having substantially similar or reciprocal laws, whenever the father of such child or children is dead, or cannot be found, or is incapable of supporting such child or children, and, if she is possessed of sufficient means or able to earn such means, she may be required to pay for the support of such child or children a fair and reasonable sum according to her means, as may be determined by the court having jurisdiction of the respondent in a proceeding instituted under this act.

(c) The parents in one state are hereby declared to be severally liable for the support of a child seventeen years of age or older residing or found in the same state or in another state having substantially similar or reciprocal laws, whenever such child is unable to maintain himself and is likely to become a public charge.

(d) A child or children born of parents who, at any time prior or subsequent to the birth of such child, have entered into a civil or religious marriage ceremony, shall be deemed the legitimate child or children of both parents, regardless of the validity of such marriage.

(e) A child or children born of parents who held or hold themselves out as husband and wife by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate child or children of both parents.

(f) A woman who was or is held out as his wife by a man by virtue of a common law marriage recognized as valid by the laws of the initiating state and of the responding state shall be deemed the legitimate wife of such man.

(g) Notwithstanding the fact that the respondent has obtained in any state or country a final decree of divorce or separation from his wife or a decree dissolving his marriage, the respondent shall be deemed legally liable for the support of any dependent child of such marriage.

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Sec. 4. Jurisdiction and powers of court. For the purposes of this act:

(a) The court shall have jurisdiction regardless of the state of last residence or domicile of the petitioner and the respondent and whether or not the respondent has ever been a resident of the initiating state or the dependent person has ever been a resident of the responding state.

(b) The court of the responding state shall have the power to order the respondent to pay sums sufficient to provide necessary food, shelter, clothing, care, medical or hospital expenses, expenses of confinement, expenses of education of a child, funeral expenses and such other reasonable and proper expenses of the petitioner as justice requires, having due regard to the circumstances of the respective parties.

(c) The courts of both the initiating state and the responding state shall have the power to order testimony to be taken in either or both of such states by deposition or written interrogatories, and to limit the nature of and the extent to which the right so to take testimony shall be exercised, provided that the respondent is given a full and fair opportunity to answer the allegations of the petitioner.

Sec. 5. Cases in which proceedings are maintainable. A proceeding to compel support of a dependent may be maintained under this act in any of the following cases:

(a) Where the petitioner and the respondent are residents of or domiciled or found in the same state.

(b) Where the petitioner resides in one state and the respondent is a resident of or is domiciled or found in another state having substantially similar or reciprocal laws.

(c) Where the respondent is not and never was a resident of or domiciled in the initiating state and the petitioner resides or is domiciled in such state and the respondent is be-

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lieved to be a resident of or domiciled in another state having substantially similar or reciprocal laws.

(d) Where the respondent was or is a resident of or domiciled in the initiating state and has departed or departs from such state leaving therein a dependent in need of and entitled to support under this act and is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws.

Sec. 5A. Remedies of a public agency. Whenever the state or a political subdivision, or any official agency thereof, is furnishing support or is likely to furnish support to a dependent it shall have the same right to invoke the provisions of this act as the dependent to whom the duty of support is owed.

Sec. 6. Procedure. (a) A proceeding under this act shall be commenced by a petitioner by filing a verified petition in the court in the county of the state wherein he resides or is domiciled showing the name, age, residence and circumstances of the petitioner, alleging that he is in need of and is entitled to support from the respondent, giving his name, age, residence and circumstances, and praying that the respondent be compelled to furnish such support.

(b) If the respondent be a resident of or domiciled in such state and the court has or can acquire jurisdiction of the person of the respondent under existing laws in effect in such state, such laws shall govern and control the procedure to be followed in such proceeding.

(c) If the respondent be not a resident of or domiciled in or cannot be found in such state, a judge of such court shall certify that a verified petition has been filed in his court in a proceeding against the respondent under this act to compel the support of the petitioner, that a summons, duly issued out of his court for service upon the respondent has been

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returned with an affidavit to the effect that the respondent cannot with due diligence be located or served with such process in the initiating state, that the respondent is believed to be residing or domiciled in the responding state and that, in his opinion, the respondent should be compelled to answer such petition and should be dealt with according to law, and he shall transmit such certificate and certified copies of such petition and summons to the appropriate court in the responding state.

(d) Any judge of a court in the county of the responding state in which the respondent resides or is domiciled or found, upon presentation to him of such certificate and certified copies of such petition and summons, shall fix a time and place for a hearing on such petition and shall issue a summons out of his court, directed to the respondent, duly requiring him to appear at such time and place.

(e) It shall not be necessary for the petitioner or the petitioner's witnesses to appear personally at such hearing, but it shall be the duty of the petitioner's representative of the responding state to appear on behalf of and represent the petitioner at all stages of the proceeding.

(f) If at such hearing the respondent controverts the petition and enters a verified denial of any of the material allegations thereof, the judge presiding at such hearing shall stay the proceedings and transmit to the judge of the court in the initiating state a transcript of the clerk's minutes showing the denials entered by the respondent.

(g) Upon receipt by the judge of the court in the initiating state of such transcript, such court shall take such proof, including the testimony of the petitioner and the petitioner's witnesses and such other evidence as the court may deem proper, and, after due deliberation, the court shall make its recommendation, based on all of such proof and evidence, and shall transmit to the court in the responding state a certified

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transcript of such proof and evidence and of its proceedings and recommendation in connection therewith.

(h) Upon the receipt of such transcript, the court in the responding state shall resume its hearing in the proceeding and shall give the respondent a reasonable opportunity to appear and reply.

(i) Upon the resumption of such hearing, the respondent shall have the right to examine or cross-examine the petitioner and the petitioner's witnesses by means of depositions or written interrogatories, and the petitioner shall have the right to examine or cross-examine the respondent and the respondent's witnesses by means of depositions or written interrogatories.

(j) If a respondent, duly summoned by a court in the responding state, wilfully fails without good cause to appear as directed in the summons, he shall be punished in the same manner and to the same extent as is provided by law for the punishment of a defendant or witness who wilfully disobeys a summons or subpoena duly issued out of such court in any other action or proceeding cognizable by said court.

(k) If, on the return day of the summons, the respondent appears at the time and place specified therein and fails to answer the petition or admits the allegations thereof or, if, after a hearing has been duly held by the court in the responding state in accordance with the provisions of this section, such court has found and determined that the prayer of the petitioner, or any part thereof, is supported by the evidence adduced in the proceeding, and that the petitioner is in need of and entitled to support from the respondent, the court shall make and enter an order directing the respondent to furnish support to the petitioner and to pay therefor such sum as the court shall determine, having due regard to the parties' means and circumstances. A certified copy of such order shall be transmitted by the court to the court in the

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nitiating state and such copy shall be filed with and made a part of the records of such court in such proceeding. The court shall place the respondent on probation on such terms and conditions as the court may deem proper or necessary to assure faithful compliance by the respondent with such order. The court shall also have power to require the respondent to furnish recognizance in the form of a cash deposit or surety bond in such amount as the court may deem proper and just to assure the payment of the amount required to be paid by the respondent for the support of the petitioner.

(l) The court making such order shall have the power to direct the respondent to make the payments required thereby at specified intervals to the probation department or bureau of the court and to report personally to such department or bureau at such times as may be deemed necessary and the respondent shall at all times be under the supervision of such department or bureau.

(m) A respondent who shall wilfully fail to comply with or violate the terms or conditions of the support order or of his probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court.

(n) Upon the receipt of a payment made by the respondent pursuant to the order of the court of the responding state in any proceeding under this act, the probation department or bureau of such court shall forthwith transmit the same to the court of the initiating state.

(o) The probation department or bureau of the court in the responding state shall, not later than thirty days following the end of each fiscal year, furnish to the court of the initiating state an itemized statement under oath of all pay-

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ments made by the respondent during such fiscal year for the support of the petitioner in such proceeding.

(p) The court of the initiating state shall receive and accept all payments made by the respondent to the probation department or bureau of the court of the responding state and transmitted by the latter on behalf of the respondent. Upon receipt of any such payment, and under such rules as the court of the initiating state may prescribe, the court, or its probation department or bureau, as the court may direct, shall deliver such payment to the dependent person entitled thereto, take a proper receipt and acquittance therefor, and keep a permanent record thereof.

Sec. 7. Duty of petitioners' representative. It shall be the duty of all petitioners' representatives of this state to appear in this state on behalf of and represent the petitioner in every proceeding pursuant to this act, at the time the petition is filed and at all stages of the proceeding thereafter, and to obtain and present such evidence or proof as may be required by the court in the initiating state or the responding state.

Sec. 8. Construction of act. 1. This act shall be construed to furnish an additional or alternative civil remedy and shall in no way affect or impair any other remedy, civil or criminal, provided in any other statute and available to the petitioner in relation to the same subject matter.

2. This act shall not be construed to confer jurisdiction on the court of the initiating or responding state in any pending or future action for divorce, legal separation or annulment.

Sec. 9. Uniformity of interpretation. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

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Sec. 10. Separability. If any part of this act or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the remainder of such act or the application thereof to other persons and circumstances.

Sec. 11. Chapter seven hundred ninety of the laws of nineteen hundred forty-eight, entitled "An act to amend the children's court act of the state of New York and the domestic relations court act of the city of New York, in relation to conferring additional jurisdiction and powers upon all children's courts and the family court of the city of New York in support proceedings against persons residing in other states and territories of the United States having substantially similar or reciprocal laws," is hereby repealed.

Sec. 12. This act shall take effect immediately.

APPENDIX E.

California—Uniform Reciprocal Enforcement of Support Act.

CHAPTER 1290

An act to repeal Title 10a, comprising Sections 1650 to 1681, inclusive, of Part 3 of the Code of Civil Procedure, and to add a new Title 10a, comprising Sections 1650 to 1690, inclusive, to Part 3 of said code, providing a civil and criminal procedure for enforcement of the duties of support.

The people of the State of California do enact as follows:

SECTION 1. Title 10a, comprising Sections 1650 to 1681, inclusive, of Part 3 of the Code of Civil Procedure, is repealed.

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SEC. 2. Title 10a, comprising Sections 1650 to 1690, inclusive, is added to Part 3 of said code, to read:

TITLE 10a. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

CHAPTER 1. GENERAL PROVISIONS

1650. This title is known and may be cited as the Uniform Reciprocal Enforcement of Support Act.

1651. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

1652. The purposes of this title are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the law with respect thereto.

1653. As used in this title unless the context requires otherwise.

(1) "State" includes any state, territory or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted.

(2) "Initiating state" means any state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced.

(3) "Responding state" means any state in which any proceeding pursuant to the proceeding in the initiating state is or may be commenced.

(4) "Court" means the superior court and when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

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(5) "Law" includes both common and statute law.

(6) "Duty of support" includes any duty of support imposed or imposable by law, or by any court order, decree or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, judicial separation, separate maintenance or otherwise.

(7) "Obligor" means any person owing a duty of support.

(8) "Obligee" means any person to whom a duty of support is owed.

(9) "Prosecuting official" means the district attorney, city attorney, or city prosecutor charged with the prosecution of criminal offenses in the city or other area in which the obligor is alleged to be present.

1654. The remedies provided in this title are in addition to and not in substitution for any other remedies.

1655. Duties of support arising under the law of this State, when applicable under Section 1670, bind the obligor, present in this State, regardless of the presence or residence of the obligee.

Chapter 2. Criminal Enforcement

1660. The Governor of this State (1) may demand from the Governor of any other state the surrender of any person found in such other state who is charged in this State with the crime of failing to provide for the support of any person in this State and (2) may surrender on demand by the Governor of any other state any person found in this State who is charged in such other state with the crime of failing to provide for the support of a person in such other state. The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person

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whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.

1661. Any obligor contemplated by Section 1660, who submits to the jurisdiction of the court of such other state and complies with the court's order of support, shall be relieved of extradition for desertion or nonsupport entered in the courts of this State during the period of such compliance.

CHAPTER 3. CIVIL ENFORCEMENT

1670. Duties of support enforceable under this title are those imposed or imposable under the laws of any state where the alleged obligor was present during the period for which support is sought or where the obligee was present when the failure to support commenced, at the election of the obligee.

1671. Whenever the State or a political subdivision thereof furnishes support to an obligee, it has the same right to invoke the provisions hereof as the obligee to whom the support was furnished for the purpose of securing reimbursement of expenditures so made and of obtaining continuing support.

1672. All duties of support are enforceable by action irrespective of relationship between the obligor and obligee. Jurisdiction of all proceedings hereunder shall be vested in the superior court.

1673. The complaint shall be verified and shall state the name and, so far as known to the plaintiff, the address and

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circumstances of the defendant and his dependents for whom support is sought and all other pertinent information. The plaintiff may include in or attach to the complaint any information which may help in locating or identifying the defendant including, but without limitation by enumeration, a photograph of the defendant, a description of any distinguishing marks of his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, or social security number.

1674. The prosecuting official may, upon the request of the court, represent the plaintiff in any proceeding under this title.

1675. A complaint on behalf of a minor obligee may be brought by a person having legal custody of the minor without appointment as guardian ad litem.

1676. If the court of this State acting as an initiating state finds that the complaint sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or his property, it shall so certify and shall cause three copies of (1) the complaint, (2) its certificate, and (3) this act to be transmitted to the court in the responding state. If the name and address of such court are unknown and the responding state has an information agency comparable to that established in the initiating state it shall cause such copies to be transmitted to the state information agency or other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court of the initiating state.

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CALIFORNIA—UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT.

1677. A court of this State acting either as an initiating or responding state may in its discretion direct that any part of or all fees and costs incurred in this State shall be waived, including without limitation by enumeration, fees for filing, service of process, seizure of property, and stenographic service of both plaintiff and defendant, or either. Where the action is brought by or through the State or an agency thereof, there shall be no filing fee, library fee, or reporter's fee.

1678. When the court of this State, acting either as an initiating or responding state, has reason to believe that the defendant may flee the jurisdiction it may (a) as an initiating state request in its certificate that the court of the responding state obtain the body of the defendant by appropriate process if that be permissible under the law of the responding state; or (b) as a responding state, obtain the body of the defendant by appropriate process.

1679. The Attorney General is hereby designated as the state information agency under this title, and it shall be its duty:

(1) To compile a list of the courts and their addresses in this State having jurisdiction under this title and transmit the same to the state information agency of every other state which has adopted this or a substantially similar law.

(2) To maintain a register of such lists received from other states and to transmit copies thereof as soon as possible after receipt to every court in this State having jurisdiction under this title.

1680. When the court of this State, acting as a responding state, receives from the court of an initiating state the aforesaid copies, it shall (1) docket the cause, (2) notify the prosecuting official, (3) set a time and place for a hearing,

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and (4) take such action as is necessary in accordance with the laws of this State to obtain jurisdiction.

1681. If a court of this State, acting as a responding state, is unable to obtain jurisdiction of the defendant or his property due to inaccuracies of inadequacies in the complaint or otherwise, the court shall communicate this fact to the court in the initiating state, shall on its own initiative use all means at its disposal to trace the defendant or his property, and shall hold the case pending the receipt of more accurate information or an amended complaint from the court in the initiating state.

1682. The court shall conduct proceedings under this title in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.

1683. If the court of the responding state finds a duty of support, it may order the defendant to furnish support or reimbursement therefor and subject the property of the defendant to such order.

1684. The court of this State when acting as a responding state shall cause to be transmitted to the court of the initiating state a copy of all orders of support or for reimbursement therefor.

1685. In addition to the foregoing powers, the court of this State when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular

(a) To require the defendant to furnish recognizance in the form of a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant.

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(b) To require the defendant to make payments at specified intervals to the probation officer of the county or the obligee and to report personally to such probation officer at such times as may be deemed necessary.

(c) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court.

1686. The court of this State when acting as a responding state shall have the following duties which may be carried out through the probation officer of the county:

(a) Upon the receipt of a payment made by the defendant pursuant to any order of the court or otherwise, to transmit the same forthwith to the court of the initiating state, and

(b) Upon request to furnish to the court of the initiating state a certified statement of all payments made by the defendant.

1687. The court of this State when acting as an initiating state shall have the duty which may be carried out through the probation officer of the county to receive and disburse forthwith all payments made by the defendant or transmitted by the court of the responding state.

1688. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this title. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

1689. Any order of support issued by a court of this State when acting as a responding state shall not supersede any previous order of support issued in a divorce or separate

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maintenance action, but the amounts for a particular period paid pursuant to either order shall be credited against amounts accruing or accrued for the same period under both.

1690. Participation in any proceedings under this title shall not confer upon any court jurisdiction of any of the parties thereto in any other proceeding.

SEC. 3. If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

CLOSE IN CENTER

MOTION TO DISMISS

(34673)

FILED
JUN 27
HAROLD B. WILL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. [redacted] 108

PHILIP LANDES,

Appellant,

against

THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK, Family Court Division, County of Bronx, HON. LOUIS LORENCE, individually and as a Justice thereof,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS APPEAL

June 21, 1955.

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BLEED THRU

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 828

PHILIP LANDES,

Appellant,

against

THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK, Family Court Division, County of Bronx, HON. LOUIS LORENCE, individually and as a Justice thereof,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION TO DISMISS APPEAL

Preliminary Statement

The above-named appellant—petitioner in the State proceeding sought to be reviewed—has appealed from an order* of the Court of Appeals of the State of New York, entered January 13, 1955, which (1) denied the appellant's motion for a certificate that a constitutional question was directly involved in the appeal taken to the New York

* Erroneously referred to in the notice of appeal to this Court (p. 1) and in appellant's Jurisdictional Statement (p. 2, first par.) as a "final judgment." See order appealed from, set forth in the Jurisdictional Statement as Appendix . 38-39).

DARK PAGE BLEED THRU

Court of Appeals* on direct appeal from an order of a Special Term of the New York Supreme Court, Bronx County, denying an application in the nature of a writ of prohibition; (2) denied the appellant's motion for a stay of the proceeding sought to be restrained, then pending *sub nom. Anonymous* v. *Anonymous* in the Domestic Relations Court of the City of New York, Family Court Division, Bronx County, until determination of the appeal to the Court of Appeals in the prohibition proceeding; and (3) on the Court's own motion, dismissed the appeal upon the stated ground that "there are questions other than the constitutional validity of a statute presented," thus precluding the *direct* appeal to the Court of Appeals from a Court of original jurisdiction authorized by the New York Civil Practice Act (§588, subd. 4, set forth *post*, p. 16). The decision of the Court of Appeals is reported at 308 N. Y. 756.

Proceedings in the State Courts

The proceeding in the Domestic Relations Court of the City of New York (*i. e.*, the proceeding sought to be restrained) was brought by the former wife of the instant appellant for an order directing him to provide for the support and maintenance of their eight-year-old daughter. It was brought pursuant to the provisions of the Uniform Support of Dependents Law, enacted in the State of New York by Laws 1949, chap. 807, which may be found in McKinney's Unconsolidated Laws, under Title 7, entitled Domestic Relations, §§ 2111-2120. The petition for support was transmitted by the Superior Court of the State of California, County of Los Angeles, where the child and her mother reside, to the Domestic Relations Court of the

* Such certificate would have excused the appellant from the obligation to give the undertaking otherwise required to perfect an appeal to the New York Court of Appeals (see New York Civil Practice Act, § 593 set forth *post*, p. 17).

City of New York, Bronx County, within whose jurisdictional limits the father of the child resided.

The instant appellant was before the New York Court of Appeals on a prior appeal, which arose out of the support proceeding in the Domestic Relations Court. After a hearing in that Court on May 28, 1952, an order was made as of that date providing for payment of $65 a month for the support of the child. The respondent in that proceeding (appellant here) appealed to the Appellate Division of the Supreme Court, First Judicial Department, from that order. The Appellate Division on March 2, 1954, (1) reversed the support order because of "the informality of the record, the absence of any findings, formal or informal, and the ambiguity in the record as to whether respondent-appellant [*i. e.*, the husband] consented to the order," and (2) remitted the matter to the Domestic Relations Court for proceedings *de novo* (see § 283 App. Div. 770).

The husband appealed to the Court of Appeals as of right from the order entered in the support proceeding on the foregoing determination of the Appellate Division and moved in the Court of Appeals for an order (1) certifying that a constitutional question was directly involved in his appeal, and (2) staying proceedings in the Domestic Relations Court pending the determination of the appeal to the Court of Appeals. The Court of Appeals on May 27, 1954 denied the application and, on its own motion, dismissed the appeal on the ground that no appeal lay as of right since the order of the Appellate Division was plainly non-final in character (see 307 N. Y. 671). An application for a stay of proceedings in the Domestic Relations Court pending petition to this Court for certiorari was made to Mr. Justice REED, who denied the application on July 8, 1954, by endorsement on the moving papers reading "Denied. No Final Judgment." (See appellant's Jurisdictional Statement, p. 10, first par.)

Following the determination of the Appellate Division

and pursuant to its order remitting the matter to the Domestic Relations Court for proceedings *de novo,* that Court proceeded anew with trial of the support proceeding. The husband, respondent in that Court, thereupon moved in the New York Supreme Court, Bronx County, for an order in the nature of a writ of prohibition restraining the hearing of the proceeding in the Domestic Relations Court. That application was denied by Mr. Justice RABIN of the New York Supreme Court on or about May 21, 1954 (see New York Law Journal, May 24, 1954). The husband then made a second motion on order to show cause, for the same relief, based on supposed new evidence, it being alleged by the husband that he had only recently become aware of the fact that his former wife had remarried.

The second application was denied by Mr. Justice RABIN on or about November 24, 1954. From the order entered on this second denial of his application, the husband took the direct appeal to the New York Court of Appeals which gave rise to the order from which the instant appeal to this Court has been taken.

The hearing of the support proceeding in the Domestic Relations Court had meanwhile proceeded and had terminated, insofar as the taking of testimony was concerned, on or about December 22, 1954. Mr. Justice LORENCE of the Domestic Relations Court, before whom the proceeding was tried, reserved decision and had made no determination up to the time of the dismissal of the appeal in the prohibition proceeding by the New York Court of Appeals in January, 1955. It may be noted that up to that time and since January, 1954, no payment had been made by the father toward the support of his child.

In view of the state of the proceeding in the Domestic Relations Court, the prohibition order sought by the appellant would have restrained Mr. Justice LORENCE from pronouncing judgment after the termination of a prolonged hearing and would have served to enable the appellant to

persist in his refusal to provide for the support of his infant daughter.

Determination of the Support Proceeding

Mr. Justice LORENCE of the Domestic Relations Court handed down his decision in the support proceeding on February 25, 1955 (reported at 138 N. Y. Supp. 2d 442; not officially reported). In its decision the Court held that the New York enactment of the Uniform Support of Dependents Law was constitutional, and made the following determination with respect to support of the child by her father, the appellant in this Court (pp. 445-446):

> "I find and decide that this respondent is liable for the support of his child now 10½ years of age, residing with her mother in California. The petitioner has established by a preponderance of credible evidence that the needs of the child are at least $20 weekly for her maintenance and support. The respondent is of sufficient financial ability to meet such payment of $20 weekly. He has an annual salary of $6340 gross, plus assets of about $10,000. He has no other dependents.
>
> The respondent is hereby ordered to pay into this Court the sum of $20 weekly retroactive to December 23, 1954. Pending further order of this Court, the Support Bureau is directed to withhold payments to petitioner. The payments made by this respondent will be held in the Support Bureau, pending the disposition of an appeal by the respondent, providing such appeal is prosecuted diligently. This Court may order payments to be made to petitioner at any time in its discretion, if respondent fails to make payments promptly or fails to proceed with his appeal on the merits with due diligence.
>
> This decision constitutes the order of the Court. The Clerk is directed to send copies thereof to petitioner and the Clerk of the Court in petitioning state, also to respondent and his counsel."

The respondent in the support proceeding (appellant here) served a notice of appeal from the foregoing order of the Domestic Relations Court to the Appellate Division of the New York Supreme Court, First Judicial Department, on April 5, 1955. No steps have been taken by the appellant in prosecution of this appeal.

Significantly, the appellant makes no mention in his Jurisdictional Statement of the fact that an appeal is pending in the Appellate Division of the New York Supreme Court from the determination of the Domestic Relations Court (cf. Jurisdictional Statement, p. 11, footnote 8, and p. 17, footnote 10). There is, of course, nothing to prevent the appellant from raising on the appeal to the Appellate Division any and every constitutional question which he believes to be involved in the case. On the appeal to the Appellate Division from the prior support order of the Domestic Relations Court, the appellant did, in fact, attack the constitutionality of the Uniform Support of Dependents Law and there would be nothing to prevent his making the same challenge on the second appeal since the case was remitted to the Domestic Relations Court for proceedings *de novo* (see 283 App. Div. 770).

ARGUMENT

On the facts and proceedings hereinbefore recited, the appellees respectfully move for a dismissal of the appeal to this Court on the following grounds:

I. The appellant failed to secure a determination by the New York Court of Appeals with respect to the constitutionality of the Uniform Support of Dependents Law only because he did not pursue avenues of appeal open to him after the dismissal of his direct appeal to the Court of Appeals. His failure in that regard bars review by this Court of the order of the Court of Appeals.

II. The dismissal by the New York Court of Appeals of the direct appeal from the order denying prohibition rested on the non-federal ground that a prohibition order may properly be denied in the State of New York in the sound discretion of the Court.

III. The challenge to the constitutionality of the Uniform Support of Dependents Law presents no substantial federal question since the enactment of uniform statutes by the several States is plainly not a violation of the constitutional provision forbidding compacts between the States without the consent of Congress.

POINT I

The appellant failed to secure a determination by the New York Court of Appeals with respect to the constitutionality of the Uniform Support of Dependents Law only because he did not pursue avenues of appeal open to him after the dismissal of his direct appeal to the Court of Appeals. His failure in that regard bars review by this Court of the order of the Court of Appeals.

Authority for review by this Court of a final judgment or decree of a State court is found in § 1257 of the Judicial Code (28 U. S. C.), which, so far as here relevant, provides:

> "**§ 1257. State courts; appeal; certiorari.** Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> • • • • •
>
> (2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws

of the United States, and the decision is in favor of its validity."

The instant appellant has appealed to this Court from an order of the New York Court of Appeals which dismissed an appeal to that Court taken on direct appeal from an order of a Court of original jurisdiction, to wit, the Supreme Court of the State of New York. A direct appeal may be taken to the Court of Appeals only in the instances set forth in § 588 of the New York Civil Practice Act, which provides in this respect as follows:

> "**§ 588. Appeal as of right.** Appeal to the court of appeals as of right lies only
>
> • • • • •
>
> 4. from a judgment of a court of record of original jurisdiction which finally determines an action, or an order of such court which finally determines a special proceeding, where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court."

The Court of Appeals dismissed the direct appeal to that Court on the stated ground that "there are questions other than the constitutional validity of a statute presented (Civ. Prac. Act, § 588, subd. 4)." This was plainly *not* a determination of the constitutional question raised by the appellant. It was merely a holding that there were other questions in the case precluding a *direct* appeal from the Court of original jurisdiction.

The dismissal of the *direct* appeal by the Court of Appeals brought into play the provisions of § 592, subd. 5(e), of the New York Civil Practice Act, which reads as follows:

> "**§ 592. Limitations of time; procedure to obtain permission to appeal.** Appeals and applications for

permission to appeal to the court of appeals pursuant to this article shall be subject to the following limitations of time:

* * * * *

5. Notwithstanding any of the foregoing limitations,

* * * * *

(e) An appeal to the appropriate appellate court may be taken within thirty days after entry of an order by the court of appeals dismissing an appeal taken from a judgment or order of a court of record of original jurisdiction, upon the sole ground that such appeal is not authorized by subdivision four of section five hundred and eighty-eight or by section five hundred and ninety of this act."

It is clear from the foregoing quoted provisions of the New York Civil Practice Act that the appellant, after dismissal by the Court of Appeals of the appeal taken to it under the presumed authority of § 588, subd. 4, had the unquestioned right within thirty days after entry of the order of the Court of Appeals to serve a notice of appeal to the Appellate Division of the New York Supreme Court, the intermediate appellate tribunal. From an adverse determination of the Appellate Division, the appellant could thereafter have further appealed to the Court of Appeals (1) as of right, even from a unanimous affirmance by the Appellate Division, in view of the asserted constitutional question; (2) as of right, without regard to the existence of a constitutional question, if one or more of the Justices of the Appellate Division dissented or there was a modification in any respect of the order on appeal; (3) by leave of the Appellate Division and, in case of refusal of such permission, by leave of the Court of Appeals; or (4) by leave of the Court of Appeals on application made directly to that Court. See New York Civil Practice Act, § 588, subd. 1; § 589, subd. 3, set forth *post*, pp. 16-17.

On an appeal to the Appellate Division following the dismissal of the direct appeal to the Court of Appeals, the appellant could have raised any constitutional question he might wish to assert. The State of New York is not a jurisdiction in which constitutional questions are required to be taken directly to the highest appellate Court and are deemed waived if review is first sought in an intermediate appellate Court. Cf. *Parker* v. *Illinois*, 333 U. S. 571 (1948); *Central Union Telephone Co.* v. *City of Edwardsville*, 269 U. S. 190 (1925).

It follows from what we have said that the order of the New York Court of Appeals was not a final decree "rendered by the highest court of [the] State in which a decision could be had", as required for an appeal to this Court under § 1257 of the Judicial Code. The appellant's failure to secure the required final order resulted, as we have shown, from his failure to take advantage of the opportunity afforded him by the New York Civil Practice Act to appeal to the Appellate Division and thereafter to the Court of Appeals following the dismissal of his direct appeal to the Court of Appeals. His failure to take these further appeals was "wrong appellate procedure" which, as this Court recently stated, was "an adequate nonfederal ground, depriving this Court of jurisdiction." *Ellis* v. *Dixon*, 349 U. S. , 23 U. S. Law Week 4278, at 4279, footnote 5.

POINT II

The dismissal by the New York Court of Appeals of the direct appeal from the order denying prohibition rested on the non-federal ground that a prohibition order may properly be denied in the State of New York in the sound discretion of the Court.

We have already pointed out that a direct appeal lies to the New York Court of Appeals from a Court of original

jurisdiction only "where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court" (New York Civ. Prac. Act, § 588, subd. 4).

In the posture in which the case came on before the Court of Appeals, it could not be said that the "only question" on the appeal was the constitutional validity of the statute involved in the support proceeding. In addition to that question there was also present the question of whether the Court should exercise its discretionary power in respect to the issuance of an order of prohibition under the particular circumstances of the instant case. The New York Court of Appeals has pointed out on many occasions that the remedy of an order of prohibition "is an extraordinary one which lies in the discretion of the court." *Matter of Culver Contrg. Corp.* v. *Humphrey,* 268 N. Y. 26, 39 (1935); *Matter of Hogan* v. *Court of General Sessions,* 296 N. Y. 1, 8 (1946).

One of the factors considered by the Courts of the State of New York in determining whether an order of prohibition should issue is the availability of an appeal to correct error in the proceeding sought to be enjoined. See *Matter of Hogan* v. *Court of General Sessions, supra* [296 N. Y.] at p. 9. That remedy is plainly open to the appellant. We note again that the support proceeding in the Domestic Relations Court has terminated; that a support order has issued; and that the appellant has in fact taken an appeal from the support order to the Appellate Division of the Supreme Court. Since the appellant may raise on that appeal every constitutional question he urges in the prohibition proceeding, it would seem that the New York Supreme Court properly declined to exercise the extraordinary power vested in it of prohibiting the support proceeding in the Domestic Relations Court; the only effect of which in the

instant case would be to restrain the latter Court from enforcing an order already entered directing a father to provide for the support and maintenance of his infant daughter.

POINT III

The challenge to the constitutionality of the Uniform Support of Dependents Law presents no substantial federal question since the enactment of uniform statutes by the several states is plainly not a violation of the constitutional provision forbidding compacts between the states without the consent of Congress.

The main contention of appellant is that enactment by the several States of the Uniform Support of Dependents Law violates Article I, Section 10, Clause 3 of the Federal Constitution, which provides that "no State shall, without the Consent of Congress, * * * enter into any Agreement or Compact with another State, * * *." As indicated by the appellant (Jurisdictional Statement, pp. 4-5), the Uniform Support of Dependents Law has been enacted in six States and the somewhat similar Uniform Reciprocal Enforcement of Support Act has been enacted in some 40 States.

It would indeed be astounding if a statute enacted in some 40 States were now held to be in violation of the Federal Constitution. Fortunately, there is little doubt on that score. Practically all the grounds of attack with respect to the constitutionality of the Uniform Support of Dependents Law were raised and considered in *Duncan* v. *Smith*, Ky. , 262 S. W. 2d 373 (1953), in which the Kentucky enactment of the law was upheld. With respect to the contention that the Act constitutes an unconstitutional compact between States, the Kentucky Court of Appeals said (262 S. W. 2d, at pp. 377-378):

> "The fourth alleged ground of invalidity is that the Act constitutes a compact between states which

> requires the consent of Congress under Clause 3, Section 10, Article I of the Constitution of the United States. The simple answer to this is that the Act does not bear any of the aspects of an agreement or contract between Kentucky and any other state. Kentucky is free to repeal the Act at any time. Furthermore, the Act does not constitute 'the formation of any combination tending to the increase of political power in the states,' which was laid down as the measure of a 'compact' in *State of Virginia* v. *State of Tennessee*, 148 U. S. 503, 13 S. Ct. 728, 734, 37 L. Ed. 537."

The other contentions advanced by appellant warrant little comment. The appellant is plainly in error in his assertion (Jurisdictional Statement, p. 27) that the Uniform Support Law "is essentially a criminal law." The New York enactment provides as follows (McKinney's Unconsol. Laws, § 2116[m]):

> "(m) A respondent who shall wilfully fail to comply with or violate the terms or conditions of the support order or of his probation shall be punished by the court in the same manner and to the same extent as is provided by law for a contempt of such court or a violation of probation ordered by such court in any other suit or proceeding cognizable by such court."

The California enactment provides in similar fashion (Cal. Code Civ. Proc., Part 3, § 1685) that:

> "1685. In addition to the foregoing powers, the court of this State when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders and in particular
>
> • • • • •
>
> (c) To punish the defendant who shall violate any order of the court to the same extent as is provided by law for contempt of the court in any other suit or proceeding cognizable by the court."

The quoted provisions of the New York and California enactments hardly suffice to make them criminal statutes. As the Court said in *Duncan* v. *Smith, supra,* on this point (262 S. W. 2d, at p. 378):

> "Finally, as the eighth alleged ground of invalidity, it is asserted that the Act violates the Sixth Amendment to the U. S. Constitution, and Section 11 of the Kentucky Constitution, in that it permits punishment in the nature of criminal punishment to be imposed upon the respondent without his having had an opportunity to confront the witnesses against him. This argument is addressed to those parts of KRS 407.060 which provide for placing the respondent 'on probation' and for punishing him, in case of failure to comply with the support order, as for a contempt or for violation of probation.
>
> We have no difficulty in deciding that the provisions of the Act authorizing punishment for contempt are valid. This punishment is not for a crime, but for the purpose of coercing compliance with the orders of the court. It is used every day for the purpose of enforcing orders for support and alimony in divorce cases."

The contentions of the appellant (Jurisdictional Statement, pp. 29-35) with respect to the procedure in the State courts and his grievances arising out of the divorce obtained by his wife in California relate to matters that are plainly beyond the scope of review by this Court.

We note, finally, that the constitutionality of the Uniform Support of Dependents Law has been expressly upheld or implicitly assumed in many cases decided by the highest State courts. *Duncan* v. *Smith, supra* (Ky. , 262 S. W. 2d 373 [1953]); *Commonwealth of Pennsylvania ex rel. Dept. of Public Assistance* v. *Mong,* 160 Ohio St. 455, 117 N. E. 2d 32 (1954); *Mahan* v. *Read,* 240 N. C. 641, 83 S. E. 2d 706 (1954); *Commonwealth of Pennsylvania for use of Warren* v. *Warren,* 204 Md. 467, 105

Atl. 2d 488 (1954); *Freeman* v. *Freeman*, 226 La. 410, 76 So. 2d 414 (1954); and see *Smith* v. *Smith*, 125 Cal. App. 2d 154, 270 Pac. 2d 613 (1954); *Whittlesey* v. *Bellah*, Cal. App. 2d , 278 Pac. 2d 511 (1955).

CONCLUSION

The appeal to this Court from the order of the Court of Appeals of the State of New York should be dismissed.

June 21, 1955.

Respectfully submitted,

PETER CAMPBELL BROWN,
Corporation Counsel
of the City of New York,
Attorney for Appellees.

SEYMOUR B. QUEL,
FRED ISCOL,
of Counsel.

APPENDIX

Cited Provisions of the New York Civil Practice Act

§ 588. Appeal as of right. Appeal to the court of appeals as of right lies only

1. from a judgment or order of the appellate division, provided that the judgment finally determine an action, or the order finally determine a special proceeding, and provided further that

(a) there be directly involved the construction of the constitution of the state or of the United States; or

(b) the action or proceeding was originally commenced in the supreme court, a county court, a surrogate's court, the court of claims, or an administrative agency, and

(i) one or more justices of the appellate division dissent from its decision; or

(ii) the appellate division direct a reversal or modification of the judgment or order appealed from;

• • • • •

4. from a judgment of a court of record of original jurisdiction which finally determines an action, or an order of such court which finally determines a special proceeding, where the only question involved on the appeal is the validity of a statutory provision of the state or of the United States under the constitution of the state or of the United States; and on any such appeal only the constitutional question shall be considered and determined by the court.

§ 589. Appeal by permission. Appeal to the court of appeals by permission lies only

• • • • •

3. either

(a) by permission of the appellate division granted before application to the court of appeals for permission to appeal, and in case of refusal of such permission, by permission of the court of appeals, or

(b) by permission of the court of appeals upon application made directly to that court,

from a judgment or order of the appellate division, or of the court of original instance, which is not appealable as of right only because it does not comply with provision (a), or (b), or (c) of subdivision one of section five hundred and eighty-eight of this act.

§ 592. Limitations of time; procedure to obtain permission to appeal. Appeals and applications for permission to appeal to the court of appeals pursuant to this article shall be subject to the following limitations of time:

* * * * *

5. Notwithstanding any of the foregoing limitations,

* * * * *

(e) An appeal to the appropriate appellate court may be taken within thirty days after entry of an order by the court of appeals dismissing an appeal taken from a judgment or order of a court of record of original jurisdiction, upon the sole ground that such appeal is not authorized by subdivision four of section five hundred and eighty-eight or by section five hundred and ninety of this act.

§ 593. Security to perfect appeal. In order to perfect his appeal to the court of appeals, the appellant must give a written undertaking that he will pay all costs and damages which may be awarded against him on the appeal, not exceeding five hundred dollars. Such an undertaking is not, however, required to perfect an appeal where the appellate division or the court of appeals certifies that a constitutional question is directly involved, or where it is specially prescribed by law that such undertaking is not required.

FILE
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 108

PHILIP LANDES,

Appellant,

—vs.—

THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK, Family Court Division, County of Bronx, HON. LOUIS LORENCE, individually and as a Justice thereof,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF OPPOSING MOTION TO DISMISS APPEAL

PHILIP LANDES,
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Room 1212,
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New York, N. Y.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955.

No. 108

PHILIP LANDES,

Appellant,

—vs.—

THE DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK, Family Court Division, County of Bronx, HON. LOUIS LORENCE, individually and as a Justice thereof,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF OPPOSING MOTION TO DISMISS APPEAL

PRELIMINARY STATEMENT.

By means of technical objections which are lacking in merit and are not controlling, and by means of inferences and conclusions not substantiated by fact or law, the appellees are seeking to have this Court dismiss this appeal and thereby

delay or prevent an adjudication of constitutional questions of substantial public importance.

This appeal differs from the usual case brought before this Court in that it directly involves substantial rights of the federal government. It involves the rights of the United States Congress in that the several States have inadvertently entered into agreements and/or compacts with each other without the required consent of Congress. (Jurisdictional Statement, pp. 18-22.)[1] It involves the rights of the federal judiciary in that the several States have set up an interstate judicial system, which if carried to a logical conclusion, would completely nullify the jurisdiction of the federal courts in controversies between citizens of different States. (Jurisdictional Statement, pp. 22-26.) Significantly, the Constitution makes no provision for the safeguarding of these federal rights, except, that an individual citizen, in seeking redress for his own grievances, may bring these matters to the attention of this Court.

In replying to appellees' brief, consideration will be given first, to Point Three which deals with constitutional questions, then to Points One and Two which deal with procedural questions, and finally, the introductory section which deals with matters not directly related to this appeal.

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[1] It is noted that Congress refused to pass legislation on the subject matter of these interstate support laws inasmuch as it was believed to be unconstitutional. (Jurisdictional Statement, p. 21, footnote.)

POINT I.

THIS COURT IS NOT CONCLUSIVELY BOUND BY DETERMINATIONS MADE BY STATE COURTS ON FEDERAL CONSTITUTIONAL QUESTIONS AND THE COMPACT QUESTION IS ONLY ONE OF FOUR CONSTITUTIONAL QUESTIONS OF NATIONAL IMPORTANCE PRESENTED BY THIS APPEAL (APPELLEES' BRIEF—POINT 3).

The appellees claim in Point Three of their brief (p. 12) that: "It would indeed be astounding if a statute enacted in some 40 States were now held to be in violation of the Federal Constitution." The principal argument used is that in the case of *Duncan* v. *Smith,* (Kentucky) 262 S. W. 2d 373, the highest State court upheld the constitutional validity of the Uniform Support of Dependents Law.

The case of *Duncan* v. *Smith* was a declaratory judgment proceeding and the attorney generals of thirteen States filed briefs as *amici curiae.* The constitutional questions raised in the *Duncan* case and the arguments used were only partially the same as in the instant case, nor were the facts the same.

This Court's definition of a compact, the type of compact this Court will sanction, and the required consent of Congress (Jurisdictional Statement, pp. 18-22) are points of law which are not contained in the decision of *Duncan* v. *Smith, supra.* It is also interesting to note that the review and guidance of this Court was not sought on the federal constitutional questions involved in the case of *Duncan* v. *Smith* even though the matter was of sufficient public importance to induce the attorney generals of thirteen States to file briefs as *amici curiae.*

The cases cited at page 14 of appellees' brief deal with rulings by the several States on the constitutionality of the

interstate support laws. These citations, three of which are included in the Jurisdictional Statement, serve to strengthen appellant's arguments as to the public importance of the questions presented.

The appellees have attempted to belittle the importance of the other federal constitutional questions presented by this appeal (p. 13 of appellees' brief: "The other contentions advanced by appellant warrant little comment.").

The second question raised by appellant deals with the constitutional powers of the federal courts. The trial procedures outlined in the interstate support laws represent an attempt by the States to circumvent or nullify the powers of the federal courts in controversies between citizens of different States. That this Court will not sanction such actions is indicated in *Hyde & Oglesby* v. *Stone*, 61 U. S. 170, 175; *Payne* v. *Hook*, 74 U. S. 425, 430; *Hess* v. *Reynolds*, 113 U. S. 73, 77. (Jurisdictional Statement, pp. 22-26 inclusive.)

The third question raised by appellant deals with the applicability of the Sixth Amendment in these interstate trials. Inasmuch as the Sixth Amendment relates to criminal matters the appellees have tried to indicate that the laws in question are not criminal. The California law is on its face both a criminal and civil law. (Jurisdictional Statement, p. 57.) The New York law though it purports to be civil is essentially a criminal law. See Exhibit "A"—Warrant of Arrest and Exhibit "B"—Notice from District Attorney, pp. 33 and 35 of record now before this Court.[2]

The fourth constitutional question on equal protection raised by appellant has been completely ignored by appellees.

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[2] The acts performed against appellant by New York State in behalf of the State of California are not based on any matters directly involving the public welfare of either State. The acts are performed to fulfill obligations under an interstate compact and the individual citizen regardless of guilt or innocence, thereby becomes a pawn of the State.

The fact that the State of New York is arbitrarily and capriciously depriving one of its own citizens of his liberty and property on demand of the State of California, whereas California would not molest one of its own citizens under similar circumstances, is a novel question on equal protection that merits the attention of this Court. (Jurisdictional Statement, p. 33.)

POINT II.

AN APPEAL BY PERMISSION TO A LOWER APPELLATE COURT AFTER AN APPEAL AS OF RIGHT HAD BEEN DISMISSED BY THE NEW YORK COURT OF APPEALS WAS NOT PROPER IN THE INSTANT CASE (APPELLEES' BRIEF—POINT I—ARGUMENT 1).

The appellees indicate in Point 1 (p. 7) that after appellant's appeal was dismissed by the Court of Appeals of the State of New York, the appellant should have taken advantage of Section 592 of the Civil Practice Act and taken his appeal by permission to the Appellate Division of the New York State Supreme Court, a lower appellate court.

At the outset it should be noted that the appellees have disregarded the contents of the Notice of Appeal that was served on them in taking this appeal to the Court of Appeals of the State of New York under the provisions of Section 588(4) of the Civil Practice Act.[3] (A copy of this Notice of Appeal is contained in the record now before this Court. R., 16, 17.)

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[3] Section 588, Subdivision 4, of the Civil Practice Act provides a means of giving preference to cases containing constitutional questions. This preference is limited to the constitutional questions only, and Section 588, Subdivision 4, may not be taken advantage of for the purpose of adjudicating other questions. Lapchak v. Baker, 298 N. Y. 89. This provision of the Civil Practice Act is in conformance with Article VI, Section 7, Subsection 2 of the New York State Constitution. Section 593 referred to by appellees in a footnote on page 2 of their brief was also intended to give preference to cases containing constitutional questions over other cases.

The Notice of Appeal was limited to constitutional questions[4] and the non-constitutional questions were waived. This is in accordance with established New York procedure. In "The Powers of the New York Court of Appeals" by Cohen & Karger (1952) it is stated in the section dealing with appeals under Section 588(4) of the Civil Practice Act, p. 263:

> "There are also other situations in which a private party appellant may eliminate a possible non-constitutional issue from the case by waiving his rights in that regard, thereby leaving the constitutional question as the only issue in the case." (A footnote cites *Teeval Co.* v. *Stern*, 301 N. Y. 346, as authority.)

Inasmuch as the Court of Appeals necessarily passed upon the constitutional questions in dismissing the appeal and denying relief (*Young* v. *Ragen*, 337 U. S. 235, 238; *Titus* v. *Wallick*, 306 U. S. 282, 284) and the non-constitutional questions had been waived in the Notice of Appeal there were no grounds left on which to appeal to the Appellate Division, a lower appellate court.

Even assuming that the non-constitutional questions were not waived in the instant case, the taking of the appeal to the Appellate Division would have been construed as a waiver of the constitutional questions. With the constitutional questions thus eliminated, an appeal to this Court would have been barred. The cases cited by appellees favor the respondent with respect to this point of law. *Parker* v.

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[4] The Notice of Appeal to the Court of Appeals reads in part (R. p. 17):

> "PLEASE TAKE FURTHER NOTICE that the petitioner's appeal herein is based solely upon United States and New York State constitutional questions * * *."

Illinois, 233 U. S. 571; *Central Union Telephone Co.* v. *City of Edwardsville*, 269 U. S. 190.

The case of *Ellis* v. *Dixon*, 349 U. S. (?), 23 U. S. Law Week 4278, cited by appellees at page 10 of their brief is not applicable. In the *Ellis* case there was no complete record, for this Court and the New York Court of Appeals to review, whereas in the instant case there is a complete record of facts and law, including facts, points of law, and arguments presented by the appellees. The merits of the *Ellis* case and the appellate procedure involved were likewise not the same as in the instant case.

POINT III.

THE APPELLEES HAVE NOT SUBSTANTIATED THEIR CONTENTION THAT THE JUDGMENT IS NOT FINAL WHEREAS THE PREVAILING LEGAL AUTHORITY SUSTAINS APPELLANT'S CONTENTION THAT THE JUDGMENT IS FINAL (APPELLEES' BRIEF POINT I— ARGUMENT 2).

At the very outset of their brief the appellees state on page 1 (footnote) that the judgment on which the appellant is invoking the jurisdiction of this Court was erroneously referred to as a final judgment. Again on page 10 the appellees advance the same contention. Not a single case has been cited by them to substantiate their conclusion.

In the instant case there can be no dispute that the unqualified dismissal of appellant's appeal by the Court of Appeals of the State of New York was a final determination with respect to appellant's rights. After the dismissal there was nothing left for appellant to do with respect to this writ of prohibition proceeding.

In Robertson and Kirkham, "Jurisdiction of the Supreme Court of the United States" (1951 edition by Wolfson &

Kurland), it is stated in Section 36, at page 69, with respect to finality of judgment:

> "In proceedings in prohibition, habeas corpus, coram nobis, mandamus and quo warranto, it is sufficient, for purposes of review by the Supreme Court, if the judgment of the highest court of the state finally determines the right of the petitioner to the writ sought. These proceedings are considered as independent, even when in fact incidental to some other proceeding. * * *"

Again, in "Supreme Court Practice" (1954 edition by Stern and Gressman), it is stated, page 74:

> "The principles heretofore discussed apply with equal force to proceedings in prohibition, mandamus, habeas corpus, quo warranto, and for writ of error coram nobis. In each instance a judgment to be final must conclusively determine the right of the applicant to the writ sought. See Madruga v. Superior Court, 346 U. S. 556, 557, n. 1, for example of a state court judgment finally disposing of a writ of prohibition as being a final judgment reviewable under 28 U. S. C. 1257."

Other cases sustaining the finality of this judgment are: *Bandini Co.* v. *Superior Court,* 284 U. S. 8, 14; *Clark* v. *Williard,* 292 U. S. 112, 117-119; *Department of Banking* v. *Pink,* 317 U. S. 264, 268; *Market Street R. Co.* v. *Railroad Commission,* 324 U. S. 548, 551.

POINT IV.

THE CONTENTION THAT THE PROHIBITION ORDER WAS DENIED IN THE SOUND DISCRETION OF THE COURT IS A CONCLUSION THAT IS NOT SUBSTANTIATED BY THE RECORD OR BY PREVAILING LEGAL AUTHORITY (APPELLEES' BRIEF—POINT II).

In Point 2 of their brief (p. 10) the appellees have indicated that the dismissal of the appellant's appeal by the Court of Appeals of the State of New York rested on the ground that a prohibition order may properly be denied in the sound discretion of the Court. This allegation represents sheer speculation on the part of the appellees and there is nothing in the record now before this Court that would support appellees' contentions.

This point was not raised by appellees in the trial court, was not passed upon by the trial court (see opinion and order of the trial court—Jurisdictional Statement, pp. 39-41) and although used as an argument was not passed upon by the Court of Appeals (see opinion and order of the Court of Appeals—Jurisdictional Statement, pp. 37-39).

The cases cited by the appellees to sustain their contention that a prohibition order may be denied in the sound discretion of the court, are: *Matter of Culver Contrg. Corp.* v. *Humphrey,* 268 N. Y. 26, 39; *Matter of Hogan* v. *Court of General Sessions,* 296 N. Y. 1, 8. The appellees' contentions are based on their interpretation of dicta contained therein, whereas the actual decisions sanctioned the granting of the writs.

Furthermore, in the case of *Gardner* v. *Domestic Relations Court, et al.,* 54 N. Y. S. 2d 672, a writ of prohibition was granted against a Justice of the Domestic Relations Court, the decision indicating that a writ of prohibition could be resorted to in aid of substantial justice and to forbid the exercise of an unauthorized power. (Jurisdictional State-

ment, p. 15.) In the instant case the constitutional questions raised by appellant were and are indicative of the use of an unauthorized power.[5]

POINT V.

THE INTRODUCTORY SECTION OF APPELLEES BRIEF IS REPLETE WITH INFERENCES, INNUENDOES, AND MATTERS NOT DIRECTLY RELATED TO THIS APPEAL.

The introductory section of appellees' brief (pp. 1-6 inclusive) contains many facts taken out of context and a number of erroneous conclusions are noted. An attempt to controvert each item would involve entanglement in a morass of detail not directly related to this appeal. A few examples will substantiate appellant's contentions.[6]

On page 2 of their brief appellees indicate that the petition for support originated in the Superior Court of the State of California and was transmitted to the Domestic Relations Court of the City of New York. They have failed to indicate in conjunction therewith that the petition for support was used as a criminal adjunct to an uncontested divorce action in a foreign State. (Jurisdictional Statement, p. 7.) The action for divorce and the action for support were instituted on the same day in the same California Court.

The decision of Mr. Justice Lorence and matters relating thereto (Appellees' Brief, pp. 5-6) are not brought into ques-

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[5] It is to be noted that in New York State an action for a writ of prohibition is instituted by means of a show cause order which is signed by a Justice of the New York State Supreme Court. At the time of the signing of the show cause order the Justice may exercise his discretion and refuse to sign the order if he believes that there is no prima facie case. In the instant case the show cause order was duly signed by Mr. Justice Hammer of the New York State Supreme Court (R., 20.)

[6] Pages 7-17 inclusive, of the Jurisdictional Statement contain a complete and detailed presentation of proceedings had in this matter.

tion on this appeal inasmuch as this appeal is based on an independent lawsuit which seeks to restrain Mr. Justice Lorence or any other Justice of the Domestic Relations Court from entering or enforcing any order under the interstate support laws. (*Madruga* v. *Superior Court,* 346 U. S. 556, 557, n. 1; *Bandini Co.* v. *Superior Court,* 284 U. S. 8, 14; *Clark* v. *Williard,* 292 U. S. 112, 117-119.)[7]

At page 4 of their brief, the appellees complain that "the prohibition order sought by appellant * * * would have served to enable the appellant to persist in his refusal to provide for the support of his infant daughter." This statement is entirely unwarranted and is not in order. The fact that the appellant was deprived of his child under circumstances that could be construed as kidnapping, and that the appellant has neither seen his child nor received any word as to her welfare in more than four years (Jurisdictional Statement, p. 7) seems to be of no concern to the appellees.

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[7] The proceedings in the Domestic Relations Court were arbitrarily terminated on December 22, 1954, while this present prohibition proceeding was pending in the New York Court of Appeals. The appellees then used this termination of proceedings in the Domestic Relations Court as one of their arguments in the Court of Appeals. At this last hearing in the Domestic Relations Court the appellant was denied the right to further cross-examine the complainant by written interrogatories, was denied the right to call witnesses in his own behalf, and in spite of constitutional objections, was compelled to be a witness against himself. (Jurisdictional Statement, p. 31, footnote.)

CONCLUSION.

The appellant has established by a preponderance of legal evidence that the contentions of the appellees are without merit. The points of argument raised by the appellees are invalid in law, and unimportant in substance, compared to the real basic issues of encroachment on the powers of the federal government and flagrant disregard of individual rights.

> "It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. * * * Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects is not law, whether manifested as the decree of a personal monarch or an impersonal multitude." *Hurtado* v. *California*, 110 U. S. 516, 535-536.

The appellant therefore again prays that this Court take jurisdiction over this cause.

Respectfully submitted,

PHILIP LANDES,
Appellant *pro se*,
Room 1212,
521 Fifth Avenue,
New York, N. Y.

July, 1955.

No. 108. LANDES *v.* DOMESTIC RELATIONS COURT OF THE CITY OF NEW YORK ET AL. Appeal from the Court of Appeals of New York. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction. Appellant *pro se*. *Peter Campbell Brown* and *Seymour B. Quel* for appellees. Reported below: 308 N. Y. 756, 125 N. E. 2d 110.